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Appellate Court of Maryland
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Exhibit 2

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JUSTIN HOLDER *

Plaintiff *

v. * **CASE NO. C-21-CV-21-420**

SCOTT MORRAL, et al. *

Defendants *

TRANSCRIPT OF PROCEEDINGS

(MOTION TO DISMISS BENJAMIN AND LISA ESTES)

Circuit Court

Hagerstown, MD

March 11, 2022 at 9:58 a.m.

Before:

The Honorable Andrew F. Wilkinson Appearances:

~~**Justin**~~ **Holder, pro se, Plaintiff; and**

Benjamin Estes, Esquire, attorney for Ben and Lisa Estes, Defendants.

Transcribed from electronic recording by:

Linde M. Cessna, Court Reporter
Circuit Court for Washington County, Maryland
The Court House
Hagerstown, Maryland 21740
240-313-2564

TABLE OF CONTENTS

	PAGES
COVERSHEET	1
TABLE OF CONTENTS	2
PRELIMINARIES	3-4
MOTION TO DISMISS BEN AND LISA ESTES	
Argument – Ben Estes – By Mr. Estes	5-19
Argument – Lisa Estes – By Mr. Estes	19-22
Response – By Mr. Holder	22-47
Response – By Mr. Estes	47-52
RULING – Hold sub curia	52-53
STENOGRAPHER'S CERTIFICATION	54

interference with a public nuisance because the use of the creek Mr. Holder alleges is some sort of public easement rather than a private easement. Let's see if I have anything else there.

As to Count 4, Interference with an Easement, I believe my prior attorney Mr. Neal and I have searched and I cannot find any identifiable cause of action titled interference with an easement. And for that reason alone, his cause of action or his claims should be dismissed.

Nowhere in the Complaint is Mr. Holder alleged that a true public easement exists. He, he, relies mistakenly on Code Section COMAR, which actually has nothing to do with the granting of private or public rights in the creek it only has to do with the ability to use the creek if you already have authority to use the creek. I think Mr. Neal put it very well in Motion to Dismiss, which he filed on my behalf, in that what COMAR does and says is it says that look, if someone owns a portion of the Little Antietam Creek or a lake that you can use that

land in the government COMAR restricts how you can use that water alone. It does not grant the public any regular public easement to that land or to that water for that matter. It only restricts the use of that water to those who already have the right to using it. So, for that reason alone as well I think that Count 4 Interference with an Easement is improperly plead and should be dismissed.

The, um, I do think that - - I should mention - -

THE COURT: So, are you saying that the public cannot kayak down the Antietam Creek as it crossed your property?

MR. ESTES: I'm saying that, that COMAR, what Mr. Holder has invoked as the right establishing some sort of public easement in the creek itself and the waters of the creek is incorrectly used. That COMAR does not stand for that. It does not create a public easement in the right to use the water for Little Antietam Creek. It does not. It merely restricts the use or permits the use to those who already have access to it. Now, insofar is the land

that lies beneath the Little Antietam Creek, that issue is being litigated in the other case in case 430, *Estes v. Holder*. The actual waters that flow above creek bed. That issue is not being litigated specifically in case 430. And my saying right now that there is not a public right to use that no, I'm not.

THE COURT: And you said that in case 430, didn't you sign a stipulation with DNR that indicated that you were not making any claim that the public was not allowed to use that creek.

MR. ESTES: In case 430 - -

THE COURT: Wasn't there in their stipulation in one of the cases between you and DNR?

MR. ESTES: There is a stipulation between me and DNR.

THE COURT: What does the - - What does the sentence read that involves the public's use of the Antietam Creek part?

MR. ESTES: That, and I don't have it in front of me.

THE COURT: Neither do I.

MR. ESTES: What I believe what it says is that the State of Maryland has the right to regulate, it has the right to regulate the waters but it does not admit that there's any sort of public easement to use that water, no. It's just that it's not being litigated as part of that case.

THE COURT: Alright, look for that sentence if you will.

MR. ESTES: Sure. The right of the public if any to make use of the waters of the Little Antietam Creek or any other waters on the Estes property are not being litigated or adjudicated in this case.

THE COURT: Okay. I recall.

MR. ESTES: Does that answer your question?

THE COURT: Yes, I recall the sentence. MR. ESTES: Great. As to Count 5, Mr. Holder is seeking a declaratory judgment regarding the location of the BQT stone. In order to, to survive a Motion to Dismiss with

THE COURT: It doesn't matter. I know. Okay.

MR. HOLDER: Yeah.

THE COURT: But you're not an owner of Uncle Eddies?

MR. HOLDER: That's correct.

THE COURT: Okay.

MR. ESTES: As to - - The only other thing I want to say is, two other things. As to his remaining lands, Mr. Holder's remaining lands - -

THE COURT: So, wait a minute. In the *Estes versus Holder* cases is Uncle Eddies a defendant?

MR. ESTES: Yes. And as far as I know - - THE COURT: Why is Mr. Holder the one filing all the pleadings in that case arguing about where the line is when you're not the owner?

MR. HOLDER: Because Mr. Estes had originally had charged me with trespassing for killing two hundred trees this big on his property and I have to prove where the property line is to prove that I'm not guilty of the trespass.

THE COURT: Okay.

MR. HOLDER: That's all. That's the only reason.

THE COURT: Okay. Alright. Mr. Estes, you've got about one more minute because I need to take a quick break before our next hearing.

MR. ESTES: Sure, no, yeah, just the last thing. There isn't, seemed like there was some confusion regarding what is actually being litigated regarding the water and the land under the Little Antietam Creek. What is being litigated in case 430 *Estes v. Holder* is the land underneath the creek, Little Antietam Creek and its tributaries. The actual water that flows through the land is not being litigated. I think that's important to know that the right to exclude and the right to own the property which is under the Little Antietam Creek as well as its tributaries is being litigated in case 430 already. That would leave the only issue for this case, if at all, is some sort of right to utilize the water that flows on top of the creek. My understanding from talking to the Deputy State's Attorney is that the

State's opinion on this is that, look, you can float these waters, you can use kayak - -

THE COURT: Can I kayak down that Little Antietam Creek through what is claimed to be your property?

MR. ESTES: You can, sir.

THE COURT: Can you stop me?

MR. ESTES: I cannot stop you unless you touch my land, the land which is underneath the water.

THE COURT: So, I can't stop on the - - I can't stop what - - What your position is I can't stop and have a picnic on the bank.

MR. ESTES: That is my understanding. And that is my understanding of the State's Attorney.

THE COURT: Can I walk through it?

MR. ESTES: Can you walk through it? No, Your Honor.

THE COURT: Because I'm touching your land.

MR. ESTES: That's correct because I own the land.

THE COURT: You think COMAR does not extend to walking?

MR. ESTES: That's exactly right, Your Honor. That's exactly right. It allows for no property rights. It does not grant property - -

THE COURT: But water - - I think COMAR says and I forget exactly what it says. Water - - MR. ESTES: Water, recreational, contact - - THE COURT: Water, recreation, water sports that sort of thing?

MR. ESTES: That's correct. It says you can do those things.

THE COURT: Walking in waters not water recreation.

MR. ESTES: No. Fishing - -

THE COURT: Okay.

MR. ESTES: Fishing is, that's correct. THE COURT: We'll have that - - But I can't stand there I have to be in my kayak.

MR. ESTES: In a boat or whatever. That (unintelligible).

THE COURT: That's a discussion for 430.

MR. ESTES: A later time.

THE COURT: That's a discussion for the other case.
MR. ESTES: That is exactly right.
THE COURT: It may be a discussion for this case with respect to nuisance. But I think the riparian rights and what COMAR allows people to do through the Antietam Creek is interesting. The question will be, what is the definition of recreation, and if you're saying recreation does not include walking through a creek, that will be an interesting question to decide.
MR. ESTES: And with regard to riparian rights Mr. Holder as shown on these plats owns no land that would abut the Little Antietam Creek anywhere near where my property does. And that's all I really have. THE COURT: Yes I got it. Except for what he claims is the remaining lands to the east of the railroad which I've just, I'm just now understanding today.
MR. ESTES: And I don't think that that's sufficiently plead in his Complaint either.

MR. ESTES: Very well. Thank you, Your Honor.
THE COURT: And that is not to suggest you didn't do a good job. You did. Okay.
MR. HOLDER: Thank you very much, Your Honor. We're going to take just five minutes real quick and then I'll be back for the next hearing. Okay.
MR. HOLDER: Thank you, Your Honor.

END OF PROCEEDINGS AT 11:00 A.M.

√ Digitally signed by Linde M. Cessna

DIGITALLY SIGNED CERTIFICATE I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of,

Justin Holder v. Scott Morral, et al., Case No. C-21-CV-21-420 in the Circuit Court for Washington County, on March 11, 2022, before the Honorable Andrew F. Wilkinson. I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 53 constitute the official transcript of the proceedings. In witness whereof, I have affixed my signature this 24th day of March, 2022.

Linde M. Cessna

Court Reporter

Exhibit 3

HOUSE BILL 797

R2 3lr1788

By: **Delegates McIntosh, Frush, ~~and S. Robinson~~ S. Robinson, Beidle, Carr, Kipke, McMillan, Norman, and Weir**

Introduced and read first time: February 6, 2013
Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 20, 2013

CHAPTER _____

AN ACT concerning

Transportation Projects – ~~Bridges~~ Transportation Facilities – Water Access

FOR the purpose of requiring the Department of Transportation and local governments, in developing a construction or improvement project involving a bridge ~~that~~ or other transportation facility that is adjacent to or crosses a waterway, to ~~incorporate, to the extent feasible,~~ consider any reasonable and appropriate measures to provide or improve certain water access for certain activities; requiring the Department and local governments, in consultation with certain entities, to establish certain ~~inventories of certain bridges and approaches to bridges; requiring the Department and local governments to review certain bridge construction and improvement projects to determine which of the projects can safely and reasonably incorporate the provision of or improvements to water access for certain activities~~ standards and guidelines for identifying appropriate transportation facilities for certain water access and best practices and cost effective strategies to accommodate certain water access; and generally relating to the incorporation of water access considerations into construction or improvement projects involving a ~~bridge~~ transportation facility.

BY adding to
~~Article 24 – Political Subdivisions – Miscellaneous Provisions~~
~~Section 25–101 to be under the new title "Title 25. Transportation Planning"~~
~~Annotated Code of Maryland~~
~~(2011 Replacement Volume and 2012 Supplement)~~

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Article – Local Government
Section 1–1309
Annotated Code of Maryland
(As enacted by Chapter ____ (H.B. 472) of the Acts of the General Assembly of 2013)

BY repealing and reenacting, without amendments,
Article – Transportation
Section 2–103.1(c)(1)
Annotated Code of Maryland
(2008 Replacement Volume and 2012 Supplement)

BY adding to
Article – Transportation
Section 2–103.1(c)(7)
Annotated Code of Maryland
(2008 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

~~**Article 24 – Political Subdivisions – Miscellaneous Provisions**~~

~~**TITLE 25. TRANSPORTATION PLANNING.**~~

~~**25–101.**~~

Article – Local Government

1–1309.

(A) A COUNTY OR MUNICIPALITY, IN DEVELOPING A CONSTRUCTION OR IMPROVEMENT PROJECT INVOLVING A BRIDGE ~~THAT~~ OR OTHER TRANSPORTATION FACILITY THAT IS ADJACENT TO OR CROSSES A WATERWAY, SHALL ~~INCORPORATE, TO THE EXTENT FEASIBLE,~~ CONSIDER ANY REASONABLE AND APPROPRIATE MEASURES TO PROVIDE OR IMPROVE IN THE VICINITY OF THE BRIDGE OR OTHER TRANSPORTATION FACILITY WATER ACCESS FOR FISHING, CANOEING, KAYAKING, OR ANY OTHER ~~APPROPRIATE~~ NONMOTORIZED WATER DEPENDENT RECREATIONAL ACTIVITY.

(B) A COUNTY OR MUNICIPALITY, IN CONSULTATION WITH THE DEPARTMENT OF NATURAL RESOURCES AND INTERESTED STAKEHOLDERS, SHALL ESTABLISH ~~AN INVENTORY OF BRIDGES AND APPROACH HIGHWAYS TO BRIDGES UNDER THE JURISDICTION OF THE COUNTY OR MUNICIPALITY THAT CROSS NAVIGABLE WATERWAYS OR WATERWAYS AMENABLE TO FISHING~~

~~ACTIVITY AT WHICH WATERWAY ACCESS MAY BE PROVIDED OR IMPROVED REASONABLY AND SAFELY~~**:**

(1) STANDARDS AND GUIDELINES FOR IDENTIFYING APPROPRIATE BRIDGES AND OTHER TRANSPORTATION FACILITIES TO BE CONSIDERED FOR THE PROVISION OR IMPROVEMENT OF WATER ACCESS UNDER THIS SECTION; AND

(2) BEST PRACTICES AND COST EFFECTIVE STRATEGIES FOR ACCOMMODATING WATER ACCESS UNDER THIS SECTION.

Article – Transportation

2–103.1.

(c) (1) The Consolidated Transportation Program shall:

(i) Be revised annually; and

(ii) Include:

1. A list of:

A. The current State transportation goals;

B. Program priorities; and

C. For projects in the construction phase, the criteria used to select major capital projects for inclusion in the capital program, as determined by the Department;

2. A statement of the Department's projected annual operating costs, set forth separately for the Office of the Secretary and for each modal administration;

3. Expanded descriptions of major capital projects;

4. A list of major capital projects for the current year, the budget request year, and the 4 successive planning years;

5. A list of anticipated minor capital projects, including a specific list of anticipated special projects for the current year and the budget request year and an estimate of the Program level for each of the 4 successive planning years;

6. A list of major bridge work projects;

7. A summary of the capital and operating programs, as defined by the Secretary, for the Maryland Transportation Authority;

8. For each listed major capital project, an indication whether the revenue source anticipated to support that project consists of federal, special, general, or other funds;

9. The Department's estimates of the levels and sources of revenues to be used to fund the projects in the Program;

10. A glossary of terms; and

11. A cross–reference table for the information contained in the various parts of the State Report on Transportation.

(7) (I) THE DEPARTMENT, IN DEVELOPING A CONSTRUCTION OR IMPROVEMENT PROJECT INVOLVING A BRIDGE ~~THAT~~ OR OTHER TRANSPORTATION FACILITY THAT IS ADJACENT TO OR CROSSES A WATERWAY FOR INCLUSION IN THE CONSOLIDATED TRANSPORTATION PROGRAM, SHALL ~~INCORPORATE, TO THE EXTENT FEASIBLE,~~ CONSIDER ANY REASONABLE AND APPROPRIATE MEASURES TO PROVIDE OR IMPROVE IN THE VICINITY OF THE BRIDGE OR OTHER TRANSPORTATION FACILITY WATER ACCESS FOR FISHING, CANOEING, KAYAKING, OR ANY OTHER ~~APPROPRIATE~~ NONMOTORIZED WATER DEPENDENT RECREATIONAL ACTIVITY.

(II) THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF NATURAL RESOURCES AND INTERESTED STAKEHOLDERS, SHALL ESTABLISH ~~AN INVENTORY OF BRIDGES AND APPROACH HIGHWAYS TO BRIDGES UNDER THE JURISDICTION OF THE DEPARTMENT THAT CROSS NAVIGABLE WATERWAYS OR WATERWAYS AMENABLE TO FISHING ACTIVITY AT WHICH WATERWAY ACCESS MAY BE PROVIDED OR IMPROVED REASONABLY AND SAFELY~~:

1. STANDARDS AND GUIDELINES FOR IDENTIFYING APPROPRIATE BRIDGES AND OTHER TRANSPORTATION FACILITIES TO BE CONSIDERED FOR THE PROVISION OR IMPROVEMENT OF WATER ACCESS UNDER THIS PARAGRAPH; AND

2. BEST PRACTICES AND COST EFFECTIVE STRATEGIES FOR ACCOMMODATING WATER ACCESS UNDER THIS PARAGRAPH.

SECTION 2. ~~AND BE IT FURTHER ENACTED, That the Maryland Department of Transportation and each county and municipality shall review all bridge construction and improvement projects that are in the planning or design phase on the effective date of this Act to determine which of these projects can safely and~~

~~reasonably incorporate the provision of or improvements to waterway access for fishing, canoeing, kayaking, or any other appropriate water dependent recreational activity.~~

~~SECTION 3.~~ AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2013.

Approved:

_____

Governor.

_____

Speaker of the House of Delegates.

_____

President of the Senate.

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. C-21-cv-20-000430
	:	
JUSTIN HOLDER, *et al.*	:	
	:	
Defendants.	:	

PLAINTIFF'S OPPOSITION TO DEFENDANT JUSTIN HOLDER'S MOTION TO ALTER OR AMEND JUDGMENT

Plaintiff Benjamin Estes, by and through undersigned counsel, files this Opposition to Defendant Justin Holder's Motion to Alter or Amend Judgment, and for good cause states as follows:

I. Introduction.

Mr. Holder has titled his motion as "Motion to Alter or Amend Judgment," but the motion largely addresses issues that are the subject upcoming trial in this matter. Mr. Holder's Motion should be denied for several reasons.

First, Mr. Holder admittedly has no standing to argue that a judgment by the Court about the location of the property line between property owned by Plaintiff and Defendant Uncle Eddie's Brokedown Palace, LLC should be altered or amended. Mr. Holder undisputedly does not have superior title to Plaintiff's property. In his Motion to Alter or Amend Judgment, Mr. Holder "concede[s] for the purposes of this Motion that this Court's Order of September 20, 2022 resolves the quiet title issue as to this Defendant, without waiving any appeal and/or revisory action(s) to challenge the Court's Order." (Holder Mot., at 2). For that reason alone, Mr. Holder's Motion to Alter or Amend Judgment should be denied.

Second, Mr. Holder is purportedly seeking to alter or amend the Court's Order, dated September 20, 2022, which granted in part and denied in part Plaintiff's Motion for Summary Judgment. But this is not a final judgment and it is therefore improper to seek to alter, amend, or otherwise revise this decision pursuant to Maryland Rule 2-535. Mr. Holder's request for entry of a final judgment, pursuant to Maryland Rule 2-602(b), should also be denied

Third, in the September 20, 2022 Order, the Court ordered that the boundary line between Plaintiff's property and Defendant Uncle Eddie's Brokedown Palace, LLC's property is as indicated on Plat 10955. The Court denied summary judgment on the issues of whether Plaintiff's rights to the land under the water of the Creek prohibits others from using the Creek bottom within Plaintiff's property line and as to Plaintiff's request for injunctive relief. These issues are subject to a bench trial beginning December 15, 2022. Despite this, Mr. Holder spends much of his Motion to Alter or Amend Judgment attempting to litigate the issues that are subject to that upcoming trial.

For the reasons set forth herein, Mr. Holder's Motion to Alter or Amend Judgment should be denied in its entirety.

II. Procedural Background.

On May 6, 2021, Plaintiff filed a Second Amended Complaint with claims for (1) Trespass to Land; (2) Statutory Claim Pursuant to Maryland Natural Resources Article § 5-409; (3) Private Nuisance; (4) Aiding and Abetting Trespass to Land; (5) Quiet Title; and (6) Ejectment. On February 10, 2022, the Court issued an Order bifurcating Counts 5 and 6 from the other counts in the Second Amended Complaint. The Court ordered that Counts 5 and 6 would proceed as a bench trial, followed by a jury trial as to the remaining counts.

On June 21, 2022, Plaintiff filed a Motion for Summary Judgment, which Defendants each separately opposed. Plaintiff argued that there were no facts in dispute and that the Court could determine the location of the property line as a matter of course. Plaintiff asserted that his deed, reflected in Plat 9186, and Defendant Uncle Eddie's Deed, reflected in Plat 10955, show the property line, which is supported by the chains of title for both properties. The Court held a more than two-hour hearing on the Motion for Summary Judgment on August 2, 2022.

On September 20, 2022, the Court issued an Opinion and Order, which granted in part and denied in part Plaintiff's Motion for Summary Judgment. The Court recognized that the "threshold issue for the court is whether the court can determine the location of the property line between Plaintiff's land and Defendant Uncle Eddie's land at this summary judgment stage." (Op. at 2). The Court ordered that "the boundary line between the Plaintiff's lands and the lands of Defendant Uncle Eddie's Brokedown Palace, LLC is as indicated on Plat 10955, one of the Plat Records of Washington County, Maryland." (*Id.* at 12). The Court denied "summary judgment on the issues of: (1) whether Plaintiff's rights to the land under the water of the Creek prohibits others, including the Holder family, from using the Creek bottom within Plaintiff's property line, and (2) injunction. This case will proceed for bench trial as currently scheduled on these issues." (*Id.*). The Court took under advisement any demands for summary judgment as to the bifurcated Counts 1-4. (*Id.*).

Trial as to the two remaining quiet title issues—injunction and whether the Holders and others are prohibited from using the Creek bottom within Plaintiff's property line—was scheduled to begin on October 4, 2022, but was continued due to a Covid exposure. The trial has been rescheduled for December 15 and 16, 2022.

On September 21, 2022, Mr. Holder filed a request to the Court for leave to file a Motion "requesting clarification of the Courts [sic] September 20th, 2022 Opinion and Order." The Court responded that "[t]he court order of 9/20/22 stands as-is."

On October 4, 2022, Mr. Holder filed a letter with the Court requesting to file a motion to remove or recuse Judge Wilkinson from this case and requesting to file a motion to alter and amend the Court's September 20, 2022 opinion. On October 6, 2022, the Court granted Mr. Holder leave to file a motion. Mr. Holder filed a Motion to Alter or Amend Judgment on October 12, 2022. Plaintiff files this Opposition.

III. Argument.

A. Mr. Holder does not have standing to dispute Plaintiff's title.

The boundary line dispute that is subject to Plaintiff's claims for quiet title (Count 5) and ejectment (Count 6) and which was decided in the Court's September 20, 2022 Order concerns two properties: property owned by Plaintiff Benjamin Estes and property owned by Defendant Uncle Eddie's Brokedown Palace LLC ("Uncle Eddies"). Because Mr. Holder does not own the property that was in dispute, and undisputedly cannot demonstrate superior title, he has no standing to request that the Court alter or amend its decision regarding the location of the property line.

Defendant Deena Holder has repeatedly stated in discovery and in filings in this case that she does not claim any right, title, or interest in the claimed land at issue and that the property at issue is owned by Uncle Eddies. *See* D. Holder Opp. to MSJ, at 1; Ex. 1, D. Holder ATI, at 3-4 ("The area of land which Mr. Estes is disputing in this action is not owned by me.").

Mr. Holder has similarly stated that he does "not claim ownership" in any portion of Mr. Estes' property. (Ex. 2, Holder ATI, at 12-13). Mr. Holder further acknowledged in responses to Plaintiff's Request for Admissions that he does not own the Uncle Eddies' property:

> • Admit that Defendant Justin Holder is not the landowner of record of lands described in a Deed recorded in the land records of Washington County Maryland at Book 5726 pages 224 to 231. ADMIT
>
> • Admit that Defendant Justin Holder is not the landowner of record of lands described in a Deed recorded in the land records of Washington County Maryland at Book 5827 pages 370 to 375. ADMIT
>
> […]
>
> • Admit that in a deed dated April 10th, 2018 and record in the land records for Washington County Maryland, Uncle Eddies Brokedown Palace Paid $77,000 for the land known as 28 Antietam Dr., Keedysville MD. Admit

(Ex. 3, J. Holder Resp. to Admissions, at 3, 21). Book 5726, pages 224-231 is the Deed recorded in the land records of Washington County by which David and Mark Hutzell conveyed the Uncle Eddies property to Uncle Eddies on April 10, 2018.

Mr. Holder does not have any membership interest in Uncle Eddies. (Ex. 2, J. Holder ATI, at 15-16). Mr. Holder has contended that he is the manager of Sharpsburg Autolift, LLC, which is the manager of Uncle Eddie. (*Id.*). Mr. Holder is merely a property manager for these limited liability companies.

In a quiet title action, a plaintiff must prove "clear proof" of possession and a legal claim to title. "Clear proof" does not require clear and convincing evidence, and a preponderance of the evidence standard is applied. *See Porter v. Schaffer*, 126 Md. App. 237, 261 n. 15, 274 (1999). A plaintiff must show "color of title" at a minimum, which means title papers good enough in appearance and ostensible effect to give them the right to the bona fide belief they held that they owned the land. *Id.*: *Spicer v. Gore*, 219 Md. 469 (1959). The burden then shifts to defendant "to

establish a title which he has set up to defeat the complaint's claim of ownership." *Porter*, 126 Md. App. at 262. A defendant "**who cannot establish his own record title has no basis to complain about the strength of the plaintiff's title, even if a third party may have a superior record title claim**." *Id.* at 274 (emphasis added). *See also Alexander & Baldwin, Inc. v. Silva*, 248 P.3d 1207, 1213 (Hawaii App. 2011) ("[T]he defendant may not prevent the plaintiff from quieting plaintiff's title, except by demonstrating that the defendant's title is superior to the plaintiff's title, i.e., the defendant may not defeat the plaintiff's claim by relying on evidence of a third-party's superior title.").

Mr. Holder cannot establish his own record title. Mr. Holder cannot show that he has superior title to the land that is the subject to this action—because he does not have any title to the property—and he therefore has no basis to complain about the strength of Plaintiff's title, even if another party may allegedly have a superior record title claim. *Porter*, 126 Md. App. at 274. Mr. Holder does not have a basis for contending that Uncle Eddies has superior title, or about the strength of Plaintiff's title, when he admittedly does not have title to the property at issue. The only party that could possibly complain about the strength of Plaintiff's title—and who could seek to alter or amend the Court's judgment—is Uncle Eddies, given that it is the owner of the neighboring property.

Mr. Holder stated in his Motion to Alter or Amend Judgment that he "would concede for the purposes of this Motion that this Court's Order of September 20, 2022 resolves the quiet title issue as to this Defendant, without waiving any appeal and/or revisory action(s) to challenge the Court's Order." By Mr. Holder's own concession, the quiet title issue as to Mr. Holder has been resolved. He lists in a footnote seven arguments that he contends he made at the August 2, 2022

hearing that he seeks to preserve, but he does not assert that any of those arguments should serve a basis for altering or amending the Court's September 20, 2022 order. (Holder Mot., at 2, n.4).

The Court need not make any determination into the merits of Mr. Holder's Motion to Alter or Amend Judgment because he does not have standing to move to alter or amend a judgment in a quiet title concerning property that he does not have title to.

B. The Court's decision partially granting and partially denying Plaintiff's Motion for Summary Judgment is not a final judgment.

Preliminarily, Mr. Holder's motion is titled as a "Motion to Alter or Amend Judgment," but, pursuant to Maryland Rule 2-534, a motion to alter or amend a judgment must be "filed within ten days after entry of judgment." Md. Rule 2-534. Mr. Holder's Motion to Alter or Amend Judgment is therefore untimely, as he did not file a request with the court to file such a motion until 14 days after judgment was entered. Mr. Holder also references Maryland Rule 2-535 and is presumably proceeding under Rule 2-535(a) in requesting the Court exercise revisory power over its September 20, 2022 Order.

"Maryland Rule 2-535 prescribes the circumstances in which a court may revise an enrolled judgment in a civil action." *Thacker v. Hale*, 146 Md. App. 203, 216 (2002). "Our cases have rigorously emphasized the finality of judgment when considering revision requests under Rule 2-535." *Id.* (internal quotations omitted). "The rationale behind strictly limiting a court's revisory power is that in today's highly litigious society, there must be some point in time when a judgment becomes final." *Id.* (quoting *Tandra S. v. Tyrone W.*, 336 Md. 303, 314 (1994)).

Maryland Rule 2-535(a) provides:

> On motion of any party filed within 30 days **after entry of judgment**, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a

> judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

(Emphasis added). A judgment is considered "rendered by a court if it has clearly indicated that the issue submitted has been adjudicated completely and it has reached a final decision on the matter." *Jones v. Hubbard*, 356 Md. 513, 524 (1999). "If a ruling of the court is to constitute a final judgment, it must have at least three attributes: (1) it must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court properly acts pursuant to Md. Rule 2-602(b), it must adjudicate or complete the adjudication of all claims against all parties, and (3) the clerk must make a proper record of it in accordance with Md. Rule 2-601." *Id.* (quoting *Board of Liquor License Comm'rs v. Fells Point Café, Inc.*, 344 Md. 120, 129 (1996)).

"An order that disposes of only part of a single claim cannot be made final under Rule 605(a)." *Robert v. Robert*, 56 Md. App. 317, 323 (1983). "A 'claim' within the meaning of Rule 605(a) must at least consist of a complete cause of action." *Harford Sands, Inc. v. Levitt & Sons, Inc.*, 27 Md. App. 702, 708 (1975) (citing *Suitland Dev. v. Merchants Mort.*, 254 Md. 43, 54 (1969)). "The cases make clear that an order which merely decides whether an item of damages can be recovered, but does not decide the entire cause of action, is not a 'final judgment upon' a 'claim for relief,' and therefore an appeal from an order will not lie." *Harford Sands*, 27 Md. App. at 709. Allowing appeals form trial court rulings on issues of law that determine only part of a claim for relief "would open the door to numerous fragmented appeals." *Id.* at 711. This "would be contrary to what was contemplated when Rule 605(a) was adopted," the purpose of which "was to prevent the delay and expense which result from 'piecemeal appeals' while allowing for a separate appeal 'in the very infrequent harsh case.'" *Id.* at 711-12 (quoting *Diener Enterprises v. Miller*, 266 Md. 551, 555-56 (1972)).

The Court's granting of partial summary judgment in the present case is not an entry of a "final judgment" as the entirety of Plaintiff's quiet title claim—including injunctive relief and the use of the creek bottom by Mr. Holder and others—remain at issue and subject to a bench trial scheduled on December 15, 2022. Because the quiet title claim has not been fully adjudicated, the Court's September 20, 2022 Order should not be entered as a final judgment and should not be certified for appeal under Rule 2-602.

C. The Court's partial granting of summary judgment should not be altered, amended, or otherwise revised.

1. The Court properly determined that the boundary line between Plaintiff's property and Uncle Eddie's property is as reflected in Plat 10955.

As previously stated, in his Motion to Alter or Amend Judgment, Mr. Holder asserts that he "would concede for the purposes of this Motion that this Court's Order of September 20, 2022 resolves the quiet title issue as to this Defendant, without waiving any appeal and/or revisory action(s) to challenge the Court's Order." (Holder Mot., at 2). He includes a footnote listing seven arguments he contends were raised at the August 2, 2022 hearing on Plaintiff's Motion for Summary Judgment, but he does not assert that these serve any basis for altering or amending the Court's judgment. (*Id.* at 2, n.4).

Mr. Holder is seemingly not seeking to alter, amend, or otherwise revise the Court's determination of where the boundary line is in its September 20, 2022. His proposed order requests that the Court order "that the boundary line between the Plaintiff's land and the lands of Defendant Uncle Eddie's brokedown palace, LLC [sic] is as indicated on Plat 10955 one of the Plat Records of Washington County, Maryland." This is nearly identical language to what the Court ordered: "that the boundary line between the Plaintiff's lands and the lands of Defendant

Uncle Eddie's Brokedown Palace, LLC is as indicated on Plat 10955, one of the Plat Records of Washington County, Maryland." (Op. at 12).

Despite requesting that the Court order that the boundary line is as indicated on Plat 10955—which the Court has already ordered—Mr. Holder requests that the Court also order that the boundary line is "bounding on the eastern margin of the 'waters of the State' known as the Little Antietam Creek and that Uncle Eddie's "boundary extends to the thread of the public Waterway." (Holder Proposed Order).

Plaintiff has title to the lands subject to this action by clear record title. The Court properly found that there is nothing in the record that suggests anything but the absolute superiority of Plaintiff's title, and the complete failure of title of the Defendants. In a quiet title action based on clear record title, a plaintiff must show "color of title" at a minimum. *Porter v. Schaffer*, 126 Md. App. 237, 262 (1999). "In order for title based on a deed to 'give color,' it must be 'so far *prima facie* good in appearance as to be consistent with the idea of good faith on the part of the party entering under it.'" *Gore v. Hall*, 206 Md. 485, 490-91 (1955). "Color of title" is "title papers good enough in appearance and ostensible effect to give them the right to the bona fide belief they held that they owned the land." *Spicer v. Gore*, 219 Md. 469, 476 (1959). "The canons of deed interpretation are well-settled in Maryland. The interpretation of mortgages, plats, deeds, easements and covenants has been held to be a question of law." *Webb v. Nowak*, 433 Md. 666, 681 (2013).

Courts have held that "a call to a monument must be recognized unless the object to which the call refers has been lost." *Id.* "[M]onuments control over courses and distances where they continue to exist, or their locations can be determined with reasonable certainty." *Id.* Section 14-108(a) "recognizes that possession may be actual or constructive." *Wash. Mut. Bank.*

v. Homan, 186 Md. App. 372, 405 (2009). The land that is west of the Little Antietam Creek is almost all located in the 100 year flood plain and should be considered wild lands and are vacant and unoccupied. With vacant and unoccupied land, one only needs to show constructive and peaceable possession. *Id.*

An aspect of establishing record title is proving the on-the-ground location. *Porter*, 126 Md. App. at 265. "Every conveyance must either on its face, or by words of reference, give to the subject intended to be conveyed, such a description as to identify it. If it be land it must be such as to afford the means of locating it." *Id.* Plaintiff has proven the on-the-ground location of the property. Plaintiff's own deed is a recorded survey, Plat 9186 among the land records of Washington County, which clearly show the location of the Plaintiff's property. Predecessors in Plaintiff's chain of title recorded an additional survey among the land records of Washington County, plat 4040. To demonstrably locate the on-the-ground location of his property, Plaintiff engaged Frederick, Seibert & Associates, Inc. to place property markers on the property that is the subject of this litigation in the fall of 2020. Land surveyor Fred Frederick opined that the disputed property is part of the Estes Property.

Plaintiff has proven by a preponderance of evidence that he has actual title but also that, at a minimum, he has color of title to the disputed property. Dispositive of the Plaintiff's color of title and record title are the numerous recorded deeds and surveys, including Defendants' own recorded documents that show the Plaintiff's clear title. There is no dispute that for over 100 years, the deeds in both chains of title agree with very little variation. All deeds in the Uncle Eddies chain of title, including the last recorded deed indicate that the Uncle Eddies property begins as described: "Beginning at a planted stone standing near and in a Northerly direction from the West end of what was formerly the Washington County Rail Road bridge across "Little

Antietam" where said stream passes through the lands formerly belonging to Jacob Keedy." (Deed Recorded at 6468 345). The deed at issue does not simply refer to the boundary line following Little Antietam Creek; it provides specific courses and distances that have been carried forward in the chain of title and which were considered by Mr. Frederick in determining the location of the boundary line. Plaintiff's title papers are certainly good enough in appearance and ostensible in effect to give the right to the bona fide belief he owns the land in question. The Court properly found that "[t]he Uncle Eddie's Deed and the predecessor deeds agree that the property line is as indicated in Plaintiff's deed." (Op. at 7-8). In Mr. Holder's Motion, he does not dispute the Court's findings that "the current deeds and plats agree as to the description of the boundary between them," and that "this is not a case where there are two (2) current, competing deeds that show a deed overlap." (Op. at 8).

The arguments that Mr. Holder raises in his Motion regarding an interest to the middle of the creek is not a new argument and one already properly addressed by the Court. The Court found "that Uncle Eddie's goal is to have the property line at the midline of the Creek," which would require the Court "to ignore Plat 9186, Plat 10955, the Deena Holder Deed, the Uncle Eddie's Deed, the acknowledgements therein, and that there has been no correction of the current deed and plat of the Uncle Eddie's property." (Op. at 8).

Mr. Holder repeatedly cites to § 2-114 of the Real Property Article for the proposition that "[i[f the transferor owns other land on the opposite side of the [waterway], the deed…shall be construed to pass the right, title, and interest of the transferor only to the center of that portion of the [waterway]." (*Id.*). However, § 2-114 ("Title to street or highway where land binding on its is granted") actually provides that "[i]f the transferor owns other land on the opposite side of the street or highway, the deed, will, or other instrument shall be construed to pass the right, title,

and interest of the transferor only to the center of that portion of the street or highway upon which the 2 or more tracts coextensively bind." Md. Code Ann., Real Prop. § 2-114(b). This section of the Real Property Article deals explicitly with streets and highways, not with waterways or riparian rights.

Further, Mr. Holder contends that when he "transacted the purchase of property described on Eddie's Old Deed he was ignorant of title and survey" and that he did not intend "to disclaim a strip of land in the northern area of the boundary that would result in the loss of Eddie's riparian rights." (Holder Mot. at 13). But, as the Court noted in its Opinion, the owner's statement on Plat 1055 indicates that Uncle Eddie's was acknowledging that its ownership of the property was as "shown and described" on Plat 10955. (Op. at 7).

For these reasons, Mr. Holder's Motion to Alter or Amend should be denied.

2. The Court's Order did not address use of the waters or land under the water on Plaintiff's property and there is therefore no basis to alter, amend, or revise the Court's Order to address that.

A significant portion of Mr. Holder's Motion to Alter or Amend is spent addressing the use of the water on Mr. Estes' property and issues related to the navigability of the water. But the Court explicitly stated in its September 20, 2022 Order that issues related to injunctive relief (which would the ability of Mr. Holder to access the creeks on Mr. Estes Property or the creek beds) and whether Plaintiff's rights to the land under the water prohibit the Holders, or anyone else, from using the creek bottom would be subject to a bench trial. (Op. at 12). Because there have not been any orders or judgments related to those issues—and which are the subject of a trial scheduled for December 15, 2022—there is no basis to alter or amend the Court's September 20, 2022 order, which did not address those issues.

Mr. Holder contends that Mr. Estes' arguments in a bench memorandum, filed in preparation for trial on the remaining quiet title issues, regarding the right to access the creek bed of the creeks on his Property is an "absurd" position that is against public policy. (Holder Mot. at 1). But that is an issue to be addressed at trial, and has no relevance to a revision of the Court's prior order establishing the boundary line. All of the statutory authority that Mr. Holder cites to in his Motion to Alter or Amend Judgment concerns the issues related to use of bodies of water, access to bodies of water, and the navigability of bodies of water, as raised in Plaintiff's bench memorandum, and is not pertinent to the boundary line dispute. (Holder Mot. at 3-4).

Mr. Holder repeatedly states in his Motion that Little Antietam Creek is a public waterway, but that was not an issue addressed by the Court's September 20, 2022 and is a matter in dispute in the upcoming trial. Mr. Holder contends that there is "little value in owning the bed of a public way." (Holder Mot. at 14). But, in Maryland, title to *navigable* waters is largely vested in the State. *See Wicks v. Howard*, 40 Md. App. 135, 136 (1978) (emphasis added). "The public [has] a right, as common law, to *navigate* over every part of a common *navigabl*e river." *Becker v. Litty*, 318 Md. 76, 83 (1989) (emphasis added). Further, merely because one part of a body of water is navigable does not make the entire body of water navigable. *See City of Havre de Grace v. Harlow*, 129 Md. 265, 271-72 (1916). As will be proven at the upcoming trial, the waters of Little Antietam Creek on Mr. Estes' property and Spring Creek on Mr. Estes' property are not navigable.

IV. Conclusion.

Plaintiff Benjamin Estes respectfully requests that for the reasons set forth herein that the Court deny Defendant Justin Holder's Motion to Alter or Amend Judgment in its entirety.

Respectfully submitted,

By: /s/
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Alyse L. Prawde, CPF #1412180033
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aprawde@jgllaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 27, 2022, a copy of the foregoing was served on all counsel of record and parties via MDEC.

/s/
Alyse L. Prawde

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES	*	
Plaintiff	*	
v.	*	
	*	CASE NO.: C-21-CV-20-000430
JUSTIN HOLDER, *et al.,*	*	
Defendant(s)	*	

* *

REPLY TO PLAINTIFF's OPPOSITION TO JUSTIN HOLDER's MOTION TO ALTER OR AMEND JUDGEMENT

COMES NOW Defendant, Justin Kyle Holder, in proper person and files this Reply to Plaintiff's Opposition to Defendant Justin Holder's Motion to Alter or Amend Judgment, and for reasons states:

REPLY

Plaintiff dismissed the Public by stipulating (on Dec. 17th, 2021 & Jan. 7th, 2022 incorporated herein by reference, the "stipulations") to the public rights in the "waters of the state" through the Estes property and is thereby *estopped* and/or bared by *laches* in now seeking further injunction. The "Universal Rule" in *Bowie v. W. Md. R.R. Terminal Co infra* is one the Plaintiff can not overcome. Revision of this courts order is proper and necessary to clarify the law in *Bowie infra* in order to resolve the remaining issues in this case because the ("waters of the State") fact has been decided and/or conceded by Plaintiff in stipulations. Defendant's standing to request the modification is provided unequivocally *infra.*

JUSTIN HOLDER HAS STANDING

In Opposition the Plaintiff argues Justin Holder has no standing to request relief, Plaintiff is flat wrong. Plaintiff gave Justin Holder standing when he sued Justin Holder for Trespass and then Ejectment. "In support of his position, [Defendant] refers us to canons of

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ejectment law, as articulated in *Joseph v. Bonaparte,* 118 Md. 591, 593-94, 85 A. 962 (1912). There, the Court said:

> Unless the plaintiff in ejectment shows a legal title and a right to possession, not barred by the statute of limitations, he cannot recover in ejectment under the settled law of this state, no matter what may be the rule in other jurisdictions. In 1 Poe, Pl. & Prac. (4 th Ed.) § 260 it is said: Three leading rules are enforced in the trial of ejectment causes: *First, the plaintiff cannot recover upon simply proving that his title is stronger or less defective than that of the defendant;* nor is it enough for him to show that the defendant had no title whatever, or not so good a one as his own, for the decision of the case does not turn upon any such comparison. **He must recover, if at all, upon the strength of his own title, and not by reason of the weakness of that of the defendant, and therefore the defendant may always defeat the action by proof of a clear subsisting title in a stranger. This has always been an established principle of ejectment law in Maryland."** (Emphasis Supplied)
>
> *Porter v. Schaffer*, 728 A.2d 755, 126 Md. App. 237 (1999) at page 772.

> "The relief sought by the [Plaintiff] is essentially legal, and clearly available in ejectment....Here title to a piece of land is the only matter in issue, and no special circumstances for equitable consideration appear. Where the object of a proceeding is to obtain possession, the remedy is ejectment. Equity entertains jurisdiction where, although the complainant fears vexatious litigation due to a cloud on his title, he nevertheless cannot sue in ejectment because he is already in possession. The ground of equity jurisdiction in such a case is that being in possession he is denied a remedy at law."
>
> *Glorius v. Watkins*, 102 A.2d 274, 203 Md. 546 (1954) at p. 549.

"After a hearing thereon [lack of jurisdiction in equity],[1] the demurrer was sustained on the ground that the suit was essentially one to try title and the [Plaintiff] had an adequate remedy at law." *Corey v. Carback*, 94 A.2d 629, 201 Md. 389 (1953). "When a plaintiff

[1] Plaintiff lost his jurisdiction in equity when he acquiesced to the Public rights to the "waters of the State" running through the Estes property in the December 17th, 2021 and January 7th, 2022 Stipulation, incorporated herein by reference."To be sure, under RP § 14-108(b), a record owner is required to be made a defendant to an action to quiet title. ... we conclude that the circuit court improperly proceeded with trial in the absence of joinder of a necessary party, *i.e.,* the record owner of the Disputed Property, and with making a determination as to who, between the parties, had the right to possess and use the Disputed Property without the record owner of the Disputed Property being joined as a defendant." *Estate of Zimmerman v. Blatter*, 183 A.3d 223, 458 Md. 698 (2018). The State and/or Public writ large is the record owner of the "waters of the State", and it was dismissed.

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is able to allege and prove actual possession he may choose, alternatively or additionally, the action of trespass to try his title. Poe, *Pleading and Practice,* Tiffany's Edition, Vol. 1, says of trespass in § 244:

> 'The action is frequently resorted to for the purpose of trying a disputed question of title to land, as in the case of Ridgely v. Bond, in which it is declared, upon the authority of Norwood v. Shipley, that to maintain it, the plaintiff must either show title to the land on which the trespass was committed, or that he was in actual possession thereof at the time of the trespass. * * * Indeed, the action is an obviously proper one to determine the divisional lines of adjacent land owners, where each of the parties claims title and possession of the land in dispute.'

Maryland Rule T42 b. restates the rule that a plea of not guilty in ejectment confesses the possession and the ejectment, and puts in issue only the title and right to possession of the land, and the amount of damages." *HONGA RIVER GUN CLUB v. MONTCHESTER GUN CLUB*, 315 A.2d 810, 20 Md. App. 335 (1974).

THE UNIVERSAL RULE

Plaintiff asserts in Opp. At p. 13 "Md. Code Ann., Real Prop. § 2-114(b). This section of the Real Property Article deals explicitly with streets and highways, not with waterways or riparian rights." Again Plaintiff is flat wrong! "In *Callahan v. Clemens,* 184 Md. 520, 526, 41 A.2d 473 (1945), the Court of Appeals explained: ...."The statute [now Md. Code Ann., Real Prop. § 2-114] merely extends a presumption that was recognized at common law.' (Citations omitted). In *Bowie v. W. Md. R.R. Terminal Co.,* 133 Md. 1, 11-12, 104 A. 461 (1918), the Court of Appeals explained:

> 'Reasons for These Rules — The natural presumption where a deed conveys land bordering on a **stream or highway** is, that the grantor means to convey what he owns, and not to reserve a strip of land of no value to him, but the loss of which to the grantee might be productive of great injury....Therefore it may be said to be a universal rule, that a deed giving a stream as a boundary will convey title to the center of the stream or to low

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> or high water mark, *depending upon how far the grantor's title extends. ...*
> The deed is taken most strongly against the grantor in the application of this rule and courts will not favor the presumption that he has retained title to the bed of the stream.'" (Emphasis Supplied)
>
> *ANNAPOLIS ROADS v. Lindsay*, 45 A.3d 749, 205 Md. App. 270 (2012) at p. 766 - 768

CONCLUSION

The Defendant concedes for purposes of this motion the Court decided the line and Plaintiff's title. On the other hand, Plaintiff has acquiesced/capitulated to the rights of the Public in the "waters of the State" by stipulations. The common law and/or statutorily authority (see Motion to Alter or Amend generally) for the sound judicial policy of "*ad filum medium aquae sub publicum."* affirmed in the "Universal Rule" of *Bowie supra* is undisputed by Plaintiff in Opposition. Defendant Justin Holder relies on the public rights as a member thereof to occupy, possess and use the "waters of the State" reasonably and legally. Thus both parties have proven his/her title and/or right to possession and neither party has a right to exclude the other from the "waters of the State." The litigation as to injunction is terminated, along with Plaintiff's jurisdiction in equity by a revision to the Courts September 20th, 2022 Order in accordance with the laws of this State.[2]

Respectfully submitted,

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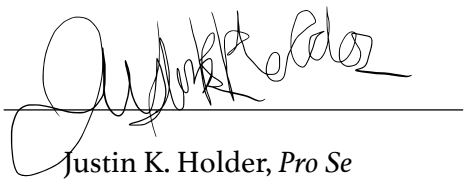
[2] The only issue left for jury trial on December 15th, 2022 is damages, to the extent Plaintiff can prove any; see pictures in Plaintiff's Opposition Exhibit 3 as piles of garbage, debris and worthless brush.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of October 2022, a copy of the foregoing Reply to Plaintiff's Opposition to Defendant Justin Holder's Motion to Alter or Amend Judgment was served via the MDEC system to :

Timothy Maloney, Esq.,
Brandy Peeples, Esq.,
Robert Kline, Esq.,
Justin Holder, *Pro Se;*



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E-FILED; Washington Circuit Court
Docket: 12/9/2022 1:50 PM; Submission: 12/9/2022 1:50 PM

BENJAMIN ESTES	*	IN THE
Plaintiff,	*	CIRCUIT COURT
v.	*	FOR
JUSTIN HOLDER, *et al.*	*	WASHINGTON COUNTY
Defendant.	*	Case No. C-21-CV-20-000463

* * * * * * * * * * *

MOTION TO QUASH SUBPOENA AND FOR PROTECTIVE ORDER

Kevin R. Tucker, Clerk of the Circuit Court for Washington County ("Clerk Tucker"), through his undersigned counsel, pursuant to Maryland Rules 2-510 and 2-403, moves to quash the subpoena directed to him by Defendant Justin Holder ("Mr. Holder") and for a protective order, and states as follows:

1. Mr. Holder, proceeding *pro se*, subpoenaed Clerk Tucker to personally appear and testify at the civil trial in this matter on December 15 and 16, 2022. *See* Exhibit 1, Subpoena to Clerk Tucker.

2. The subpoena also seeks "[e]mails, correspondence and communications with [Judge] Andrew F. Wilkinson [("Judge Wilkinson")] relating to Justin Holder and/or his 'rejected papers' not docketed." *See id*.

3. Clerk Tucker's connection, if any, with this matter derives solely from his role as Clerk of the Circuit Court for Washington County. Clerk Tucker does not have any first-hand knowledge of the subject matter of this case.

4. Clerk Tucker has a previously scheduled commitment with the Maryland Judiciary on Friday, December 16, 2022. This commitment conflicts with the second day of the civil trial.

5. Undersigned counsel spoke to Mr. Holder via telephone on Thursday, December 8, 2022, and requested that the subpoena be withdrawn. Mr. Holder refused to withdraw the subpoena. Undersigned counsel then informed Mr. Holder that a Motion to Quash Subpoena and for Protective Order would be filed on December 9, 2022. Mr. Holder stated that he was registered to receive service of the motion through the MDEC system.

6. During his phone conversation with undersigned counsel, Mr. Holder indicated that he was not seeking emails between Clerk Tucker and Judge Wilkinson, but, rather, emails between *himself* and Clerk Tucker. At this point, it is unclear what documents Mr. Holder is seeking.

7. To the extent that Mr. Holder is seeking emails between Clerk Tucker and Judge Wilkinson, those documents are protected "judicial work product" under the Access to Judicial Records Rules, Md. Rule 16-901, *et seq*. (the "Access Rules"). "Judicial work product" includes "(1) documents, notes, and memoranda prepared by a judge or other Judicial Branch personnel at the request of a judge or other judicial official, (2) documents created or maintained as part of a judge's or judicial official's deliberative process, and (3) research, requests for information, and communications by or on behalf of a judge or other judicial official, and responses thereto, intended for use in the preparation of a decision, order, recommendation, opinion, or other judicial action or pronouncement." Md. Rule 16-903(k). Any and all "[e]mails, correspondence and communications with [Judge]

Andrew F. Wilkinson relating to Justin Holder and/or his 'rejected papers' not docketed" clearly fall within the definition of judicial work product. Inspection of judicial work product is explicitly barred by Maryland Rule 16-911(d) ("A custodian shall deny inspection of a judicial record or part of a judicial record that contains judicial or other professional work product.").

8. The subpoena must be quashed and a protective order issued because the documents requested are judicial work product. Md. Rules 16-903(k), 16-911(d). Clerk Tucker may not be compelled to testify as to their contents or any related conversations with Judge Wilkinson. Md. Rule 16-911(d).

9. Compelling Clerk Tucker's testimony regarding the requested emails, if any, is not only improper under the Access Rules, but would needlessly consume valuable judicial resources by compelling the testimony of a witness who has no relevant material to offer.

10. Maryland Rule 2-510(e) provides that "the court may enter an order that justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . that the subpoena be quashed." Compelling the appearance of Clerk Tucker in this case would inflict the very sort of "annoyance" and "undue burden or expense" that the Maryland discovery rules are intended to prevent. Under the circumstances, a protective order is warranted. *See* Md. Rule 2-403 ("On motion of … a person from whom discovery is sought … and for good cause shown, the court may enter any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the

following: (1) that the discovery not be had."). Particularly given Clerk Tucker's status as the Clerk of the Circuit Court for Washington County, compelled testimony from Clerk Tucker would not only be an annoyance and a burden to him personally, but it would also constitute a disruption and inconvenience to the Circuit Court Clerk's office that must accommodate his absence.

11. For these reasons, the subpoena compelling Clerk Tucker to appear should be quashed and a protective order should be issued preventing his compelled appearance and testimony during any hearing in this matter.

WHEREFORE, Kevin R. Tucker, Clerk of the Circuit Court for Washington County, respectfully requests that this Court quash the aforementioned subpoena and issue a protective order. A proposed Order is submitted with this motion.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

/s/ Mark H. Weisner

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December 9, 2022

Attorneys for Kevin R. Tucker,
Clerk of Court,
Circuit Court for Washington County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of December, 2022, a copy of the foregoing Motion to Quash Subpoena and for Protective Order and proposed Order was electronically filed with MDEC and electronically served upon all parties or counsel entitled to service.

/s/ Mark H. Weisner

MARK H. WEISNER

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES	*	
Plaintiff	*	
v.	*	
	*	CASE NO.: C-21-CV-20-000430
JUSTIN HOLDER, *et. Al.*	*	
Defendant(s)	*	

* *

DEFENDANT JUSTIN HOLDER's RESPONSE TO HONORABLE KEVIN TUCKER's MOTION TO QUASH TRIAL SUBPOENA

COMES NOW Defendant, Justin Kyle Holder, in proper person and files this Defendant Justin Holder's Response to Honorable Kevin Tucker's Motion to Quash Trial Subpoena, and for reasons states:

OPPOSITION

The Honorable Kevin Tucker filed a "**MOTION TO QUASH SUBPOENA AND FOR PROTECTIVE ORDER** (the "MTQ") generally alleging "inconvenience" and "judicial work product" neither of which are applicable to the instant MTQ and "necessity" of witness.

1. On October 6th 2022 the Court granted Defendant Justin Holder leave to file a motion to remove or recuse Judge Andrew Wilkinson, referenced at p. 3 of Plaintiff Estes Opposition to Defendant Holder's Motion to Alter or Amend a September 20th 2022 Order and Opinion of the Court, incorporated herein by reference.

2. On November 6th, 2022 Defendant Justin Holder advised the Court in an Objection filed that "additional evidence, transcripts and documents) for his more thorough

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Motion to Remove/Recuse that the Court granted Defendant Holder permission to file on October 6th, 2022." would be forthcoming.

3. The Defendant plans on raising removal or recusal preliminarily at trial and the Court is properly expecting same. Honorable Kevin Tucker MAY be required to authenticate some records relevant to the preliminary Matters to the extent parties or Court will not stipulate to the records and facts Defendant Justin Holder offers in support thereof.

4. Honorable Kevin Tucker will be in the Circuit Court working during the 1st day of Trial and can be called in the morning, any "inconvenience" would be *de minimis.*

5. During the December 8th phone call with MARK H. WEISNER an agreement on authentication of records was not reached, nor would authentication allow cross examination of the email discussions by other parties to the extent requested.

6. The Subpoena does not request any "judicial work product" and Honorable Clerk Tucker is required to authenticate his side of Public Records and conversations described in ***Exhibit A - Gmail - MPIA REQUEST - 2nd paper removed from docket - case c-21-cv-20-371*** ("***Exhibit A***") and ***Exhibit B - Gmail - MPIA - Order to Review Justin Holders Filings before docket*** ("***Exhibit B***") attached hereto and incorporated herein by reference, and non - privileged related matters thereto.

Justin K. Holder

Pro se Litigator

308 W. Chapline St.
Sharpsburg, MD 21782
t: (240) 356-2008
Jholder2004@Gmail.com

7. Some of the pertinent testimony expected from the fact witness (to the extent he is even required) would be related (but not limited) to the following statements by Mr. Tucker:

> "To address your assertion that this document was stricken, YOU used stated, '...omnibus motion I filed in writing to try to address them was STRICKEN from the record' on page 130 of the June 21, 2022 hearing transcript. Although the Judge replied, 'the reason I struck...', it is NOT what happened to this filing. I would surmise that the Judge was referring to his March 3, 2022 Case Management Order when echoing your term 'stricken'. If he would have actually stricken the filing, which does happen with deficient filings, he would have had to pen an Order Striking that would have been subsequently docketed into the case." (Emphasis in Original) **Exhibit A** at p. 6;

after further discussion with the Honorable Clerk, Mr. Tucker explaining:

> "You seemed to have switched gears on me by changing your inquiry to another case number, C-21-CV-21-420. Case 420 does not have a Case Management Order but does have an Order (Stay of Case) dated May 3, 2022 that ordered that "No pleading or other motions are to be filed pending further order of this court." Your filing – *LINE- Stipulated Dismissal without Prejudice Defendant Charles Blancato* was rejected[1] as a result of that order and it was noted in File & Serve as such."; ***Exhibit A*** at p. 13 and
>
> "To address your 'cease and desist' request, **I spoke to Judge Wilkinson about the Case Management Order that he issued on September 21, 2021 for case C-21-CV-20-430.** Prior to accepting or rejecting a filing that may violate this order, my Clerk will consult with the Judge and he will in turn make a determination. If the filing is acceptable, it will be accepted and processed accordingly. If the filing violates the Case Management Order and/or does not have the required letter to file, the Judge will sign an order rejecting and the clerk will reject accordingly." (Emphasis Added) ***Exhibit A*** at p. 14.

VERIFICATION OF AUTHENTICITY OF ATTACHED EXHIBITS

8. I, Justin Holder, state that I am over 18 years of age, having personal knowledge of the acts set forth herein and am competent to testify.

9. ***Exhibit A - Gmail - MPIA REQUEST - 2nd paper removed from docket - case c-21-cv-20-371*** (attached hereto and incorporated herein by reference) is a true and accurate copy of the entire email conversation regarding a Maryland Public Information Act request sent by Justin Holder <***jholder2004@gmail.com***> to Honorable Kevin Tucker <***kevin.tucker@mdcourts.gov***> titled "MPIA REQUEST - 2nd paper removed from docket - case c-21-cv-20-371" on Sun, Aug 28, 2022 at 10:09 AM and discussed through Wed, Aug 31, 1:02 PM containing a total of 6 email messages.

Justin K. Holder

Pro se Litigator

308 W. Chapline St.
Sharpsburg, MD 21782
t: (240) 356-2008
Jholder2004@Gmail.com

[1] Referring to ***Exhibit B - Gmail - MPIA - Order to Review Justin Holders Filings before docket.***

10. ***Exhibit B - Gmail - MPIA - Order to Review Justin Holders Filings before docket*** (attached hereto and incorporated herein by reference) is a true and accurate copy of the entire email conversation regarding a Maryland Public Information Act request sent by Justin Holder <***jholder2004@gmail.com***> to Honorable Kevin Tucker <***kevin.tucker@mdcourts.gov***> titled "MPIA - Order to Review Justin Holders Filings before docket " on Wed, May 11, 2022 at 6:17 PM and discussed through Tue, Jul 19, 2022 at 1:42 PM containing a total of 22 email messages (5 forwarded messages privileged).

I, Justin Holder, hereby declare or affirm under the penalties of perjury and personal knowledge that the facts 8 through 10 above and matters set forth in the forgoing section titled **"VERIFICATION OF AUTHENTICITY OF ATTACHED EXHIBITS"** are true and correct; and (1) the filer has read the entire document; (2) the filer has not altered, or authorized the alteration of, the text of the verified material; and (3) the filer has personally filed the submission pursuant to Rule 20-108.

Justin K. Holder, *Pro Se*[2]

WHEREFORE, Honorable Kevin Tucker has spent more time on his Motion to Quash Subpoena and for Protective Order than would be required to authenticate records to the extent he is required in Court in conjunction with the preliminary matters being raised. Honorable Kevin Tucker's request should be denied.

Respectfully submitted,

Justin K. Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, Maryland 21782
(240) 356-2008

Justin K. Holder

Pro se Litigator

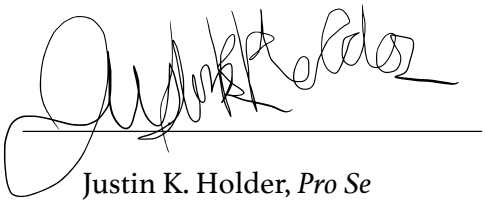
308 W. Chapline St.
Sharpsburg, MD 21782
t: (240) 356-2008
Jholder2004@Gmail.com

[2] *"signer's digital signature [affixed] to the document." Rule 20-107 - Mdec Signatures, Md. R. Elec. Fil'g & Case Mgmt. 20-107*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9h day of December 2022, a copy of the foregoing Defendant Justin Holder's Response to Honorable Kevin Tucker's Motion to Quash Trial Subpoena was served via the MDEC system to :

Emily Vainieri, Esq.,
Mark H. Weisner, Esq.,
Timothy Maloney, Esq.,
Brandy Peeples, Esq.,
Robert Kline, Esq.,
Justin Holder, *Pro Se;*



Justin K. Holder, *Pro Se*

Justin K. Holder

Pro se Litigator

308 W. Chapline St.
Sharpsburg, MD 21782
t: (240) 356-2008
Jholder2004@Gmail.com

Gmail Justin Holder <jholder2004@gmail.com>

MPIA REQUEST - 2nd paper removed from docket - case c-21-cv-20-371

6 messages

Justin Holder <jholder2004@gmail.com> Sun, Aug 28, 2022 at 10:09 AM
To: Kevin Tucker <kevin.tucker@mdcourts.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>, Jacob Weddle <jweddle@rwclawyers.com>, Brandy Peeples <brandy@peeples-law.com>, Robert Kline <klinelawgroupllc@gmail.com>, Chaz Remus <cremus@rwclawyers.com>, David Harbin <dave@harbin-law.com>

Dear Clerk Tucker,

I first would thank the clerk and staff for all the hard work they do, it is much appreciated.

Unfortunately I am writing today with another alleged due process failure. Please allow me to explain.

The case c-21-cv-20-371 went to trial on June 21st, 2022, the week before 5 parties filed Motions to Quash trial subpoenas. On saturday in anticipation of argument at trial I filed:

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

JEFFREY YOUNG
Plaintiff
v. * CASE NO.: C-21-CV-20-000371
JUSTIN HOLDER, Et Al
Defendant(s)

****

OMNIBUS MEMORANDUM IN SUPPORT OF ORAL ARGUMENTS ON MOTION TO QUASH SUBPOENA OF DNR DGS WASHCO ToK LORD AND PICKETT

COMES NOW Defendant, Justin Holder, in Proper Person, and files this Omnibus Memorandum in support of Oral Arguments on Motion to Quash Subpoena of DNR DGS WASHCO ToK LORD and PICKETT, and for reasons stated herein:

This paper was rejected:

Return Reason(s) from Clerk's Office	
Returned Reason	Other
Return Comments	Per Judge Wilkinson in reference to the Case Management Order dated March 3, 2022

Document Details	
Court	4th Circuit
Case Number	C-21-CV-20-000371
Case Style	Jeffrey Young vs. Justin Holder, et al.
Date/Time Submitted	6/19/2022 11:12 PM EST
Activity Requested	Memorandum
Filed By	Justin Holder

Apparently the order of Judge Wilkinson was to "Strike" the paper, not "reject" the paper:

23 MR. HOLDER: The (unintelligible) I looked at is that
24 omnibus motion I filed in writing to try to address them was
25 stricken from the record.

1-130

1 THE COURT: The reason I struck that is I'm just going
2 to let you argue it to me right now.

The record is devoid of any evidence the paper was filed, because it was "rejected":

Return/Affidavit of Served Subpoena	06/16/2022	17	Page 4337 - Page 4337
Return / Affidavit of Unserved Subpoena	06/16/2022	17	Page 4338 - Page 4338
Motion - Quash Subpoena	06/17/2022	17	Page 4339 - Page 4342
Certificate of Service	06/17/2022	17	Page 4343 - Page 4345
Motion - Quash Subpoena	06/17/2022	17	Page 4346 - Page 4351
Supporting Exhibit	06/17/2022	17	Page 4352 - Page 4353
Return/Affidavit of Served Subpoena	06/17/2022	17	Page 4354 - Page 4354
22.06.21 PLT 01	06/21/2022	17	Page 4355 - Page 4357
22.06.21 PLT 04	06/21/2022	17	Page 4358 - Page 4360

This is violative of due process because the Appellate can not review the record:

For example, a Motion to Strike is reviewed under an "abuse" standard. If I asked the Appellate Court:
"Did the Trial Court abuse its discretion in quashing the Washington County Subpoena (which was identical to, and served on the same day as the Town of Keedysville Subpoena - requesting the exact same testimony) when the Town of Keedysville testified the evidence of necessity for a sewer line was in the custody and control of the County?";

the record is devoid of the Memo in law I spent the weekend writing to support the Oral Arguments with grounds "on-the-fly" at trial.

DUE PROCESS BY THE RULES:

MD Rules, Rule 1-322

RULE 1-322. FILING OF PLEADINGS, PAPERS, AND OTHER ITEMS

Currentness

(a) Generally. The filing of pleadings, papers, and other items with the court shall be made by filing them with the clerk of the court, except that a judge of that court may accept the filing, in which event the judge shall note on the item the date the judge accepted it for filing and forthwith transmit the item to the office of the clerk. On the same day that an item is received in a clerk's office, the clerk shall note on it the date it was received and enter on the docket that date and any date noted on the item by a judge. The item shall be deemed filed on the earliest of (1) the filing date noted by a judge on the item (2) the date noted by the clerk on the item, or (3) the date established under section (d) of this Rule. No item may be filed directly by electronic transmission, except (1) pursuant to an electronic filing system approved under Rule 16-203, (2) as permitted by Rule 14-209.1, (3) as provided in section (b) of this Rule, or (4) pursuant to Title 20 of these Rules.

RULE 20-202. EFFECTIVE DATE OF FILING

Currentness

The MDEC system shall record the date and time an electronically filed submission is received by the MDEC system. Subject to Rules 20-201(i) and 20-203, the date recorded shall be the effective date of filing and shall serve as the docket date of the submission filed.

Source: This Rule is new.

Md Rule 20-203(d):

(d) Deficiency Notice.

(1) *Issuance of Notice.* If, upon review, the clerk concludes that a submission is not subject to striking under section (c) of this Rule but materially violates a provision of the Rules in Title 20 or an applicable published policy or procedure established by the State Court Administrator, the clerk shall send to the filer with a copy to the parties that have entered an appearance or have been served a deficiency notice describing the nature of the violation unless the deficiency is cured prior to the sending of the notice.

(2) *Judicial Review; Striking of Submission.* The filer may file a request that the administrative judge, or a judge designated by the administrative judge, direct the clerk to withdraw the deficiency notice. Unless (A) the judge issues such an order, or (B) the deficiency is otherwise resolved within 14 days after the notice was sent, upon notification by the clerk, the court shall strike the submission.

RULE 20-301. CONTENT OF OFFICIAL RECORD

Currentness

(a) Generally. The official record of an MDEC action consists of:

(1) the electronic version of all submissions filed electronically or filed in paper form and scanned into the MDEC system;

(2) all other submissions and tangible items filed in the action that exist only in non-electronic form;

(3) the electronic version of all documents offered or admitted into evidence or for inclusion in the record at any judicial proceeding, pursuant to Rule 20-106 (e);

(4) all tangible items offered or admitted into evidence that could not be filed electronically or scanned into the MDEC system;

(5) a transcript of all court recordings of proceedings in the MDEC action; and

(6) all other documents or items that, for good cause, the court orders be part of the record.

(b) Hyperlinks. A hyperlink embedded in a submission is not a part of the official record unless it is linked to another document that is a part of the official record.

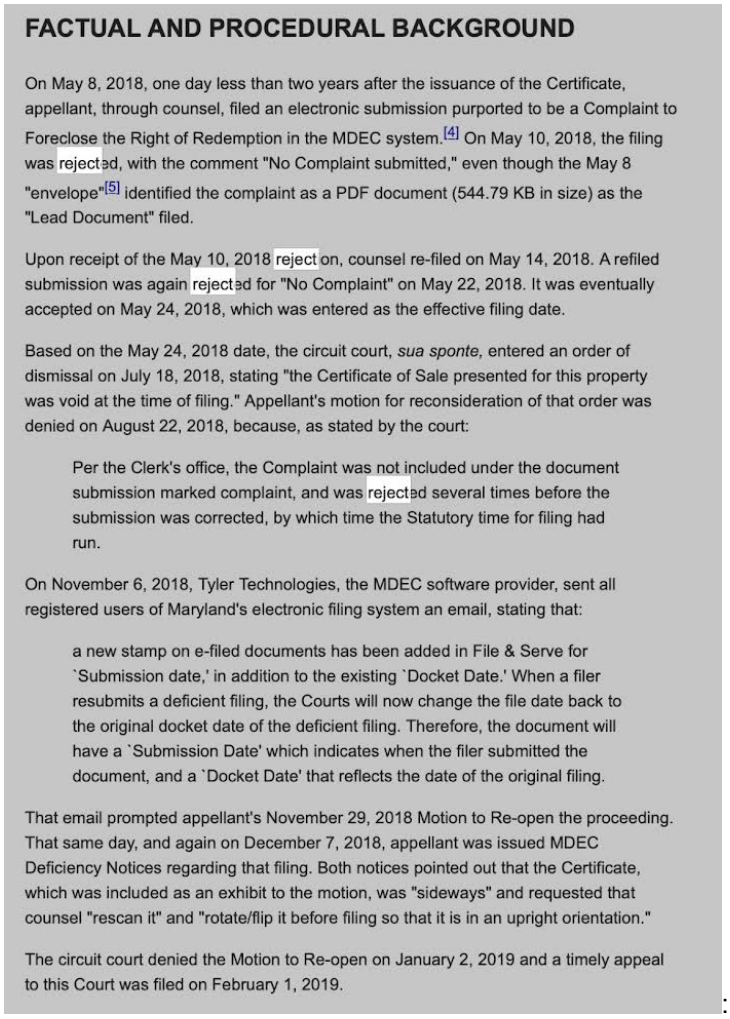
Source: This Rule is new.

(v) Submission. "Submission" means a pleading or other document filed in an action. "Submission" does not include an item offered or admitted into evidence in open court.

Cross reference: See Rule 20-402.

The Appellate has reviewed "rejected" filings in an unreported opinion:

1625



FACTUAL AND PROCEDURAL BACKGROUND

On May 8, 2018, one day less than two years after the issuance of the Certificate, appellant, through counsel, filed an electronic submission purported to be a Complaint to Foreclose the Right of Redemption in the MDEC system.[4] On May 10, 2018, the filing was rejected, with the comment "No Complaint submitted," even though the May 8 "envelope"[5] identified the complaint as a PDF document (544.79 KB in size) as the "Lead Document" filed.

Upon receipt of the May 10, 2018 rejection, counsel re-filed on May 14, 2018. A refiled submission was again rejected for "No Complaint" on May 22, 2018. It was eventually accepted on May 24, 2018, which was entered as the effective filing date.

Based on the May 24, 2018 date, the circuit court, *sua sponte*, entered an order of dismissal on July 18, 2018, stating "the Certificate of Sale presented for this property was void at the time of filing." Appellant's motion for reconsideration of that order was denied on August 22, 2018, because, as stated by the court:

> Per the Clerk's office, the Complaint was not included under the document submission marked complaint, and was rejected several times before the submission was corrected, by which time the Statutory time for filing had run.

On November 6, 2018, Tyler Technologies, the MDEC software provider, sent all registered users of Maryland's electronic filing system an email, stating that:

> a new stamp on e-filed documents has been added in File & Serve for `Submission date,' in addition to the existing `Docket Date.' When a filer resubmits a deficient filing, the Courts will now change the file date back to the original docket date of the deficient filing. Therefore, the document will have a `Submission Date' which indicates when the filer submitted the document, and a `Docket Date' that reflects the date of the original filing.

That email prompted appellant's November 29, 2018 Motion to Re-open the proceeding. That same day, and again on December 7, 2018, appellant was issued MDEC Deficiency Notices regarding that filing. Both notices pointed out that the Certificate, which was included as an exhibit to the motion, was "sideways" and requested that counsel "rescan it" and "rotate/flip it before filing so that it is in an upright orientation."

The circuit court denied the Motion to Re-open on January 2, 2019 and a timely appeal to this Court was filed on February 1, 2019.

:
see B*ATHULA v. Crabbs*, No. 3208, September Term, 2018 (Md. Ct. Spec. App. Aug. 6, 2020).

Wherefore, I allege the Clerk has violated my right to due process and in accordance with MD. General Provisions Code Ann. § 4$101 et seq. make a request to inspect, copy or photograph the record that contains the order/instruction/request from Judge WIlkinson to "reject" the paper titled "Omnibus Memorandum in support of Oral Arguments on Motion to Quash Subpoena of DNR DGS WASHCO ToK LORD and PICKETT" from the docket in case C-21-CV-20-000371. Please provide a time and cost estimate in 10 days.

Respectfully,

Justin Holder

Kevin Tucker <Kevin.Tucker@mdcourts.gov> Tue, Aug 30, 2022 at 3:50 PM
To: Justin Holder <jholder2004@gmail.com>

Mr. Holder,

To address your last statement, "*a request to inspect, copy or photograph the record that contains the order/instruction/request from Judge WIlkinson to "reject" the paper titled "Omnibus Memorandum in support of Oral Arguments 0n Motion to Quash Subpoena of DNR DGS WASHCO ToK LORD and PICKETT"* first, I offer that it was **REJECTED** by the March 3, 2022 Case Management Order (see attached).

Although this seems to be a training issue, I have now added the appropriate event to indicate that envelope #9891379 was rejected should this go on appeal. As a reminder, the document CANNOT be related to this event as it was NEVER transmitted from File and Serve. I am certainly not going to rehash all the conversations that we've exchanged regarding REJECTED filings.

To address your assertion that this document was stricken, YOU used stated, "…omnibus motion I filed in writing to try to address them was STRICKEN from the record" on page 130 of the June 21, 2022 hearing transcript. Although the Judge replied, "the reason I struck…", it is NOT what happened to this filing. I would surmise that the Judge was referring to his March 3, 2022 Case Management Order when echoing your term "stricken". If he would have actually stricken the filing, which does happen with deficient filings, he would have had to pen an Order Striking that would have been subsequently docketed into the case.

I have nothing more to offer on this matter at this time. Please be assured that any future rejections will be noted correctly on the record using the appropriate event code and comment.

As a side note, I was informed that some of your filings flow into an "error" queue before it can be reviewed because the information that you add to the Filing Description field exceeds 64 characters. This parameter is set by the software and not my office nor the Maryland Judiciary. This may cause a slight delay in processing and could require that a clerk rename the document to something less than 64 characters so that it can be accepted.

With regards,

Kevin R. Tucker – CCE

Clerk of Court

Circuit Court for Washington County

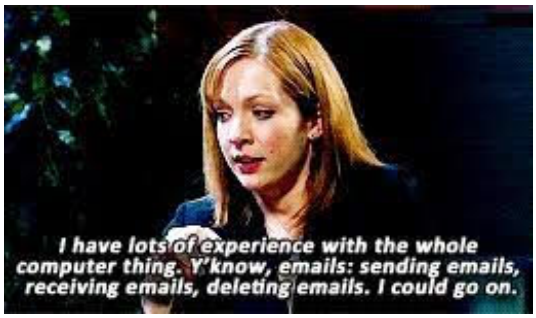
24 Summit Avenue

Hagerstown, MD 21740

OFFICE: 301-790-4972 ext: 265

CELL: 410-919-3869

kevin.tucker@mdcourts.gov


I have lots of experience with the whole computer thing. Y'know, emails: sending emails, receiving emails, deleting emails. I could go on.

Disclaimer: The office of the Clerk of the Circuit Court is committed to serving the citizens of Maryland. Every effort is made to provide accurate information and assistance regarding matters that are important to you. Please be advised, however, that we are prohibited, by law, from rendering legal advice.

From: Justin Holder <jholder2004@gmail.com>
Sent: Sunday, August 28, 2022 10:09 AM
To: Kevin Tucker <Kevin.Tucker@mdcourts.gov>
Subject: [EXTERNAL] MPIA REQUEST - 2nd paper removed from docket - case c-21-cv-20-371

Dear Clerk Tucker,

I first would thank the clerk and staff for all the hard work they do, it is much appreciated.

Unfortunately I am writing today with another alleged due process failure. Please allow me to explain.

The case c-21-cv-20-371 went to trial on June 21st, 2022, the week before 5 parties filed Motions to Quash trial subpoenas. On saturday in anticipation of argument at trial I filed:

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

JEFFREY YOUNG

Plaintiff

v. CASE NO.: C-21-CV-20-000371

JUSTIN HOLDER, Et Al

Defendant(s)

OMNIBUS MEMORANDUM IN SUPPORT OF ORAL ARGUMENTS ON MOTION TO QUASH SUBPOENA OF DNR DGS WASHCO ToK LORD AND PICKETT

COMES NOW Defendant, Justin Holder, in Proper Person, and files this Omnibus Memorandum in support of Oral Arguments on Motion to Quash Subpoena of DNR DGS WASHCO ToK LORD and PICKETT, and for reasons stated herein:

This paper was rejected:

Return Reason(s) from Clerk's Office	
Returned Reason	Other
Return Comments	Per Judge Wilkinson in reference to the Case Management Order dated March 3, 2022

Document Details	
Court	4th Circuit
Case Number	C-21-CV-20-000371
Case Style	Jeffrey Young vs. Justin Holder, et al.
Date/Time Submitted	6/19/2022 11:12 PM EST
Activity Requested	Memorandum
Filed By	Justin Holder

Apparently the order of Judge Wilkinson was to "Strike" the paper, not "reject" the paper:

1629

MR. HOLDER: The (unintelligible) I looked at is that omnibus motion I filed in writing to try to address them was stricken from the record.

1-130

THE COURT: The reason I struck that is I'm just going to let you argue it to me right now.

The record is devoid of any evidence the paper was filed, because it was "rejected":

Return/Affidavit of Served Subpoena	06/16/2022	17	Page 4337 - Page 4337
Return / Affidavit of Unserved Subpoena	06/16/2022	17	Page 4338 - Page 4338
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Motion - Quash Subpoena	06/17/2022	17	Page 4346 - Page 4351
Supporting Exhibit	06/17/2022	17	Page 4352 - Page 4353
Return/Affidavit of Served Subpoena	06/17/2022	17	Page 4354 - Page 4354
22.06.21 PLT 01	06/21/2022	17	Page 4355 - Page 4357
22.06.21 PLT 04	06/21/2022	17	Page 4358 - Page 4360

This is violative of due process because the Appellate can not review the record:

For example, a Motion to Strike is reviewed under an "abuse" standard. If I asked the Appellate Court:

"Did the Trial Court abuse its discretion in quashing the Washington County Subpoena (which was identical to, and served on the same day as the Town of Keedysville Subpoena - requesting the exact same testimony) when the Town of Keedysville testified the evidence of necessity for a sewer line was in the custody and control of the County?";

the record is devoid of the Memo in law I spent the weekend writing to support the Oral Arguments with grounds "on-the-fly" at trial.

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Currentness

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Currentness

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Source: This Rule is new.

Md Rule 20-203(d):

(d) Deficiency Notice.

(1) *Issuance of Notice.* If, upon review, the clerk concludes that a submission is not subject to striking under section (c) of this Rule but materially violates a provision of the Rules in Title 20 or an applicable published policy or procedure established by the State Court Administrator, the clerk shall send to the filer with a copy to the parties that have entered an appearance or have been served a deficiency notice describing the nature of the violation unless the deficiency is cured prior to the sending of the notice.

(2) *Judicial Review; Striking of Submission.* The filer may file a request that the administrative judge, or a judge designated by the administrative judge, direct the clerk to withdraw the deficiency notice. Unless (A) the judge issues such an order, or (B) the deficiency is otherwise resolved within 14 days after the notice was sent, upon notification by the clerk, the court shall strike the submission.

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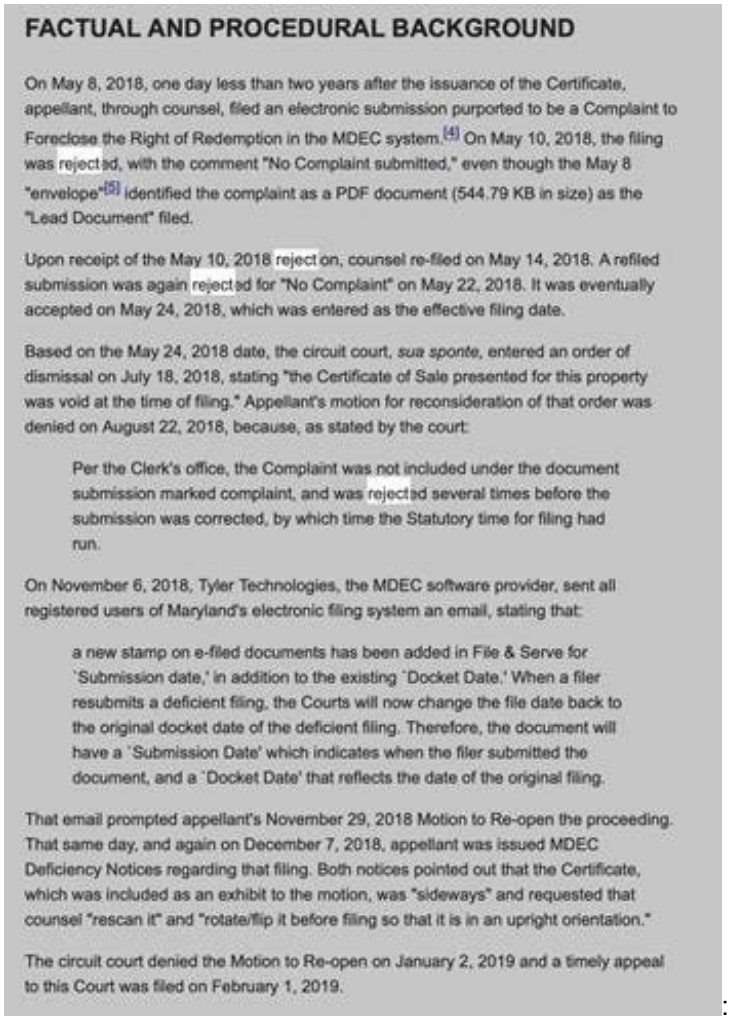
(b) Hyperlinks. A hyperlink embedded in a submission is not a part of the official record unless it is linked to another document that is a part of the official record.

Source: This Rule is new

The Appellate has reviewed "rejected" filings in an unreported opinion:

1632



FACTUAL AND PROCEDURAL BACKGROUND

On May 8, 2018, one day less than two years after the issuance of the Certificate, appellant, through counsel, filed an electronic submission purported to be a Complaint to Foreclose the Right of Redemption in the MDEC system.[4] On May 10, 2018, the filing was rejected, with the comment "No Complaint submitted," even though the May 8 "envelope"[5] identified the complaint as a PDF document (544.79 KB in size) as the "Lead Document" filed.

Upon receipt of the May 10, 2018 rejection, counsel re-filed on May 14, 2018. A refiled submission was again rejected for "No Complaint" on May 22, 2018. It was eventually accepted on May 24, 2018, which was entered as the effective filing date.

Based on the May 24, 2018 date, the circuit court, *sua sponte*, entered an order of dismissal on July 18, 2018, stating "the Certificate of Sale presented for this property was void at the time of filing." Appellant's motion for reconsideration of that order was denied on August 22, 2018, because, as stated by the court:

> Per the Clerk's office, the Complaint was not included under the document submission marked complaint, and was rejected several times before the submission was corrected, by which time the Statutory time for filing had run.

On November 6, 2018, Tyler Technologies, the MDEC software provider, sent all registered users of Maryland's electronic filing system an email, stating that:

> a new stamp on e-filed documents has been added in File & Serve for `Submission date,' in addition to the existing `Docket Date.' When a filer resubmits a deficient filing, the Courts will now change the file date back to the original docket date of the deficient filing. Therefore, the document will have a `Submission Date' which indicates when the filer submitted the document, and a `Docket Date' that reflects the date of the original filing.

That email prompted appellant's November 29, 2018 Motion to Re-open the proceeding. That same day, and again on December 7, 2018, appellant was issued MDEC Deficiency Notices regarding that filing. Both notices pointed out that the Certificate, which was included as an exhibit to the motion, was "sideways" and requested that counsel "rescan it" and "rotate/flip it before filing so that it is in an upright orientation."

The circuit court denied the Motion to Re-open on January 2, 2019 and a timely appeal to this Court was filed on February 1, 2019.

:

[Quoted text hidden]

c.21.cv.20.371 case management order.pdf
61K

Justin Holder <jholder2004@gmail.com> Tue, Aug 30, 2022 at 4:11 PM
To: Kevin Tucker <Kevin.Tucker@mdcourts.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>, Jacob Weddle <jweddle@rwclawyers.com>

Mr. Tucker,

I understand that "Although this seems to be a training issue, I have now added the appropriate event to indicate that envelope #9891379 was rejected should this go on appeal."

I was unable to find that record of "appropriate event" in case C-21-CV-21-000420 after our "conversations that we've exchanged regarding REJECTED filings" regarding what I allege is a violation of my right to due process.

I would kindly ask the clerk to cease and desist its "interpretation" of "case management" or any other orders of the Honorable Court and allow the court to decide if a paper or filing is to be stricken in accordance with the rules, law or orders of the Court.

This email does not constitute any waiver of liability or release for the alleged due process violation.

I wish the Clerk's office a wonderful week.

Respectfully,

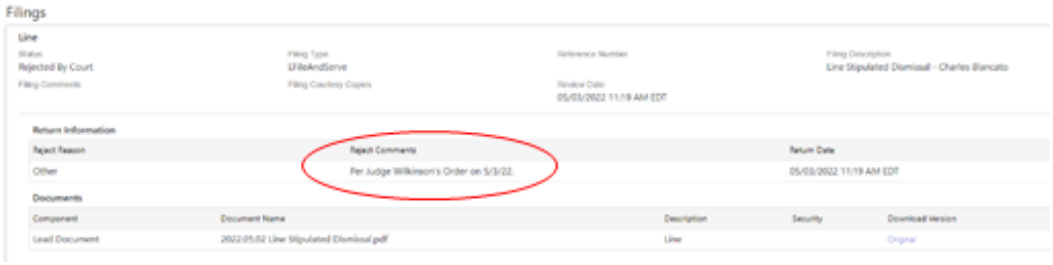
Justin Holder

[Quoted text hidden]

Kevin Tucker <Kevin.Tucker@mdcourts.gov> Wed, Aug 31, 2022 at 11:12 AM
To: Justin Holder <jholder2004@gmail.com>

Mr. Holder,

You seemed to have switched gears on me by changing your inquiry to another case number, C-21-CV-21-420. Case 420 does not have a Case Management Order but does have an Order (Stay of Case) dated May 3, 2022 that ordered that "No pleading or other motions are to be filed pending further order of this court." Your filing – *LINE-Stipulated Dismissal without Prejudice Defendant Charles Blancato* was rejected as a result of that order and it was noted in File & Serve as such.



As a result of your inquiry, I have also added the appropriate event to case 420 to capture this rejection.

I made an inquiry of my Clerk that processes Civil cases to see if there were any other rejections made in any of your cases based on Order(s) to Stay or Case Management Order(s). I believe, at this time, that all of filings that have been rejected in your cases have been properly documented in the appropriate cases.

To address your “cease and desist” request, I spoke to Judge Wilkinson about the Case Management Order that he issued on September 21, 2021 for case C-21-CV-20-430. Prior to accepting or rejecting a filing that may violate this order, my Clerk will consult with the Judge and he will in turn make a determination. If the filing is acceptable, it will be accepted and processed accordingly. If the filing violates the Case Management Order and/or does not have the required letter to file, the Judge will sign an order rejecting and the clerk will reject accordingly.

Just to be clear, this process may add additional processing time to any filing that you make, and you may see that your items remain under review during this time. You should be cognizant that the Judge may be in Court or out of the office, as might my Clerk.

This concludes what I have to offer based on your inquiry.

Regards,

[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Wed, Aug 31, 2022 at 11:26 AM
To: Adam Greivell <adam@greivelllawoffice.com>

[Quoted text hidden]

25 attachments

image001.png
17K

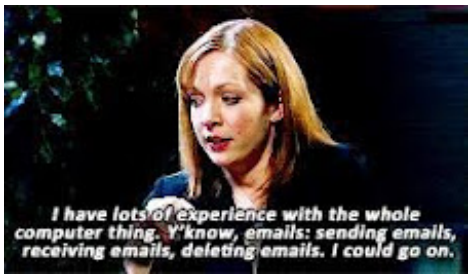

I have lots of experience with the whole computer thing. Y'know, emails: sending emails, receiving emails, deleting emails. I could go on.

image002.jpg
9K

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

JEFFREY YOUNG
Plaintiff
v. CASE NO.: C-21-CV-20-000531
JUSTIN HOLDER, Et Al
Defendant(s)

OMNIBUS MEMORANDUM IN SUPPORT OF ORAL ARGUMENTS ON MOTION TO QUASH SUBPOENA OF DNR DGS WASHCO ToK LORD AND PICKETT

COMES NOW Defendant, Justin Holder, in Proper Person, and files this Omnibus Memorandum in support of Oral Arguments on Motion to Quash Subpoena of DNR DGS WASHCO ToK LORD and PICKETT, and for reasons stated herein:

image003.png
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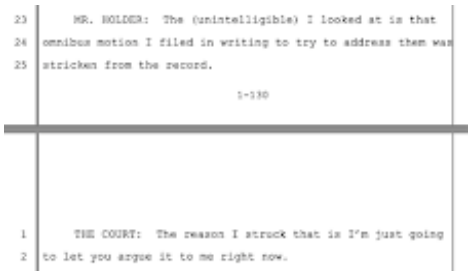
23 MR. HOLDER: The (unintelligible) I looked at is that
24 omnibus motion I filed in writing to try to address them was
25 stricken from the record.

1-130

1 THE COURT: The reason I struck that is I'm just going
2 to let you argue it to me right now.

image005.png
26K

Return/Affidavit of Served Subpoena	06/16/2022	17	Page 4337 - Page 4337
Return / Affidavit of Unserved Subpoena	06/16/2022	17	Page 4338 - Page 4338
Motion - Quash Subpoena	06/17/2022	17	Page 4339 - Page 4342
Certificate of Service	06/17/2022	17	Page 4343 - Page 4345
Motion - Quash Subpoena	06/17/2022	17	Page 4346 - Page 4351
Supporting Exhibit	06/17/2022	17	Page 4352 - Page 4353
Return/Affidavit of Served Subpoena	06/17/2022	17	Page 4354 - Page 4354
22.06.21 PLT 01	06/21/2022	17	Page 4355 - Page 4357
22.06.21 PLT 04	06/21/2022	17	Page 4358 - Page 4360

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60K

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RULE 20-104. EFFECTIVE DATE OF FILING

Comment

The MDEC system shall record the date and time an electronically filed submission is received by the MDEC system. Subject to Rules 20-201.6 and 20-203, the date recorded shall be the effective date of filing and shall serve as the docket date of the submission filed.

Source: This Rule is new.

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FACTUAL AND PROCEDURAL BACKGROUND

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image012.jpg
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RULE 1-201. FILING OF PLEADINGS, PAPERS, AND OTHER ITEMS

Comment

image007.jpg

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RULE 20-202. EFFECTIVE DATE OF FILING
Comments
The MDEC system shall record the date and time an electronically filed submission is received by the MDEC system.
Source: This Rule is new.

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I have lots of experience with the whole computer thing. Y'know, emails: sending emails, receiving emails, deleting emails. I could go on.

image002.jpg
9K

Return/Affidavit of Served Subpoena	06/16/2022	17	Page 4337 - Page 4337
Return / Affidavit of Unserved Subpoena	06/16/2022	17	Page 4338 - Page 4338
Motion - Quash Subpoena	06/17/2022	17	Page 4339 - Page 4342
Certificate of Service	06/17/2022	17	Page 4343 - Page 4345
Motion - Quash Subpoena	06/17/2022	17	Page 4346 - Page 4351
Supporting Exhibit	06/17/2022	17	Page 4352 - Page 4353
Return/Affidavit of Served Subpoena	06/17/2022	17	Page 4354 - Page 4354
22.06.21 PLT 01	06/21/2022	17	Page 4355 - Page 4357
22.06.21 PLT 04	06/21/2022	17	Page 4358 - Page 4360

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Return Reason(s) from Clerk's Office	
Returned Reason	Other
Return Comments	Per Judge Wilkinson in reference to the Case Management Order dated March 3, 2022

Document Details	
Court	4th Circuit
Case Number	C-21-CV-20-000371
Case Style	Jeffrey Young vs. Justin Holder, et al.
Date/Time Submitted	6/16/2022 11:12 PM EST
Activity Requested	Memorandum
Filed By	Justin Holder

image004.png
36K

(v) Submission. "Submission" means a pleading or other document filed in an action. "Submission" does not include an item offered or admitted into evidence in open court.
Cross reference: See Rule 20-402.

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6K

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

JEFFREY YOUNG
Plaintiff
v. CASE NO.: C-21-CV-20-000371
JUSTIN HOLDER, Et Al
Defendant(s)

OMNIBUS MEMORANDUM IN SUPPORT OF ORAL ARGUMENTS ON MOTION TO QUASH SUBPOENA OF DNR DGS WASHCO ToK LORD AND PICKETT

COMES NOW Defendant, Justin Holder, in Proper Person, and files this Omnibus Memorandum in support of Oral Arguments on Motion to Quash Subpoena of DNR DGS WASHCO ToK LORD and PICKETT, and for reasons stated herein:

image003.png
55K

image010.jpg
23K

image005.png
26K

Justin Holder <jholder2004@gmail.com> Wed, Aug 31, 2022 at 1:02 PM
To: Kevin Tucker <Kevin.Tucker@mdcourts.gov>
Bcc: Jacob Weddle <jweddle@rwclawyers.com>, Brandy Peeples <brandy@peeples-law.com>, David Harbin <dave@harbin-law.com>, Adam Greivell <adam@greivelllawoffice.com>, Chaz Remus <cremus@rwclawyers.com>, Robert Kline <klinelawgroupllc@gmail.com>

Dear Honorable Clerk Tucker,

I kindly thank you and the Honorable Judge Wilkinson for your time and consideration. Emails are monotone, I will add some human connection, I greatly respect yourself and Judge Wilkinson, you are very likeable and friendly fellows. This is not meant to be personal, but from a "business" side and my "business" is my right to the docket, courts and due process, I kindly request some redress.

FIRST AND FOREMOST - THANK YOU

Thank you for making the following notations on the docket.
Case C-21-CV-21-000420 reflects:

> 05/03/2022 Submission Rcvd & Rejected for Non-Compliance Rule 20-101.1

Case C-21-CV-20-000371 reflects:

> 06/21/2022 Submission Rcvd & Rejected for Non-Compliance Rule 20-101.1

Md. Rule 20-101 is the definitions section of the MDEC and case management rule. The only relevant portion of that rule upon my review of the definitions is:

“(v)Submission. "Submission means a pleading or other document filed in an action. "Submission does not include an item offered or admitted into evidence in open court.” *Rule 20-101 - Definitions*, Md. R. Elec. Fil'g & Case Mgmt. 20-101

I have reviewed our emails regarding the "training issue" and "rejected" filings and I do not find any legal basis in the rules, or factual evidence to support the Clerks position at this time.

The May 3rd, 2022 "rejection" in case 420 was related to a May 2nd, 2022 filing of a stipulated dismissal, and the May 3rd, 2022 stay order came afterwards.

The June 21st, 2022 "rejection" in case 371 was related to an Opposition to 5 Motions to Quash, and I read the case management order as allowing an opposition to a Motion to be filed when required. I also believe the Case Management Orders entered to be violative of due process and overly broad.

NOTING - This email does not constitute any waiver of liability or release for the alleged due process violation.

MOVING FORWARD

The Clerk, upon consult with the Court offer the following as a solution:

"To address your 'cease and desist' request, I spoke to Judge Wilkinson about the Case Management Order that he issued on September 21, 2021 for case C-21-CV-20-430. Prior to accepting or rejecting a filing that may violate this order, my Clerk will consult with the Judge and he will in turn make a determination." (the "solution").

With all due respect for the Clerk and Honorable Judge WIlkinson, I respectfully reject that solution as unjust, unfair and patently unconstional. I further interpret the solution to be an (immediately appealable) injunction, enjoing a *pro se* litigant from access to the Honorable Court's docket. The stay in case c-21-cv-21-000420 appears indefinite as the Court has not rendered its decision in case C-21-cv-20-000371 within 2 monthes of hearing arguments and the stay in case 420 was contigient upon same, see Md. Cont. Article IV sec 23.

In the alternative of backtracking and rehashing, I would kindly ask the Honorable Clerk and Honorable Judge Wilkinson to please consider the following procedure:

When I file a paper or pleading, please docket the paper or pleading. There are consequences for bad faith and violation of a court order, and I am aware of same. The end result is that the paper is docketed and struck and my record in tact, versus the clerk being responsible for interpretation of a judicial order. The result is that I am not enjoined from the docket and access to the court. The result is justice for all. The result seems equally or perhaps even more economical than the solution the Clerk has offered.

I would please again ask the Honorable Clerk and Court (who has once been an advocate) to kindly consider how their clients would feel unfairly prejudiced by the solution ordered.

I wish the Clerk's office and Judge Wilkinson a very good day. I am very appreciative of the effort the Clerk and Court have put into this discussion. I do respectfully request redress of my grievance in accordance with our great constitution.

Sincerely,

Justin Holder
[Quoted text hidden]

Gmail Justin Holder <jholder2004@gmail.com>

MPIA - Order to Review Justin Holders Filings before docket

22 messages

Justin Holder <jholder2004@gmail.com> Wed, May 11, 2022 at 6:17 PM
To: Kevin Tucker <kevin.tucker@mdcourts.gov>
Bcc: Brandy Peeples <brandy@peeples-law.com>, Robert Kline <klinelawgroupllc@gmail.com>, Jacob Weddle <jweddle@rwclawyers.com>, Adam Greivell <adam@greivelllawoffice.com>

Dear Clerk Tucker,

I am writing to request Public Information and Records.

Please provide a copy of all written Order(s) and/or oral order(s) that Honorable Judge Wilkinson (or any other officer of the Circuit Court) has requested/ordered the clerk
to place my pleadings and papers "under review" as it related to the attached ***Odyssey File & Serve - Filing History under review*** and incorporated herein by reference;
prior to docketing the pleadings and papers;
related to MDEC filings in Case(s) C-21-CV-21-000420, C-21-CV-20-000371 and/or C-21-CV-20-000371;or as a general rule in regard to pleadings and papers filed by Justin holder or Pro Se litigants.

Please provide a time and cost estimate in 10 days.

Respectfully,

Justin Holder

Odyssey File & Serve - Filing History under review.pdf
62K

Kevin Tucker <Kevin.Tucker@mdcourts.gov> Thu, May 12, 2022 at 8:28 AM
To: Justin Holder <jholder2004@gmail.com>

Mr. Holder,

I am out of the office today and tomorrow for personal reasons. I will review your request in more detail when I return to the office on Monday, May 16th.

In the meantime, are you asking that I only review the File & Serve submission that you have highlighted in your attachment?

Knowing that you are a registered user for the listed cases, all pleadings, including written orders, that are processed by my office can be viewed by you. Any “oral orders” that Judge Wilkinson may have issued would had to have happened during open Court and would be a part of the recorded record, of which I do not maintain.

Regards,

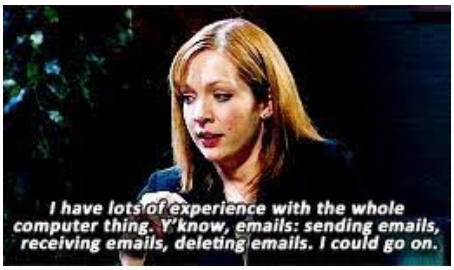
Kevin R. Tucker - Clerk of Court

24 Summit Avenue

Hagerstown, MD 21740

301-790-4972

kevin.tucker@mdcourts.gov


I have lots of experience with the whole computer thing. Y'know, emails: sending emails, receiving emails, deleting emails. I could go on.

[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Thu, May 12, 2022 at 11:50 AM
To: Kevin Tucker <Kevin.Tucker@mdcourts.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Honorable Clerk Tucker,

Good morning and thank you kindly for your email on your day off. Please do not feel obligated to respond until you are back in the office. I appreciate all the good work you do as Honorable Clerk.

I would like to premise our conversation by acknowledging I agree with your statement:

"Knowing that you are a registered user for the listed cases, all pleadings, including written orders, that are processed by my office can be viewed by you. Any “oral orders” that Judge Wilkinson may have issued would had to have happened during open Court and would be a part of the recorded record..."

I, being my own *pro se* advocate, enjoy the duty of compliance with the Orders when I submit a filing to the docket.

I have been using the MDEC system for a solid year, and as such have become accustomed to the typical data points and acknowledgement emails.

What I have noticed is that my filings in case C-21-CV-20-000371 and C-21-CV-21-000420 go "under review" before being docketed. This is what happened to the May 11th, 2022 Objection attached to my original email. A second example is attached as ***Odyssey File & Serve - Envelope Receipt - under review 5 -3 -22,*** a May 3rd, 2022 Objection that was served at 5/3/2022 12:16 PM EST but not docketed until 5/4/2022 2:43 PM EST.

I am personally unaware of any Order (written or Oral) to place my filings "under review" prior to docketing and the "under review" status is not a normal data point in the MDEC process. I have seen it on large files or exhibits with pictures, those get stuck in the queue and require a resubmittal. They are even served. So when these 2 aforementioned Objections became "under review" after being served, my suspicion was raised, and I made the request to investigate why the Objections are not being docketed right away.

Which brings me to my Second area of curiosity:

1) On Mon, May 2, 2022 at 5:11 PM I filed a Line that was Submitted and Served, see ***Submitted - Gmail - Filing Submitted for Case/ C-21-CV-21-000420; Justin Holder vs. Scott Morral, et al.; Envelope Number/ 9548832*** & ***Service - Gmail - Notification of Service for Case/ C-21-CV-21-000420, Justin Holder vs. Scott Morral, et al. for filing Supporting Exhibit, Envelope Number/ 9548832;***

2) On Tue, 5/3/2022 9:19 AM the attached Order was Docketed, see ***Order - 420-2.pdf;***

3) On Tue, May 3, 2022 at 11:19 AM the Line Submitted and Served Tue, May 3, 2022 at 11:19 AM, was returned in accordance with a Tue, 5/3/2022 9:19 AM Order, see **Returned - Gmail - Filing Returned for Envelope Number/ 9548832 in Case/ C-21-CV-21-000420, Justin Holder vs. Scott Morral, et al. for filing Supporting Exhibit.**

DUE PROCESS CONCERNS (In confidence and unrelated to the MPIA Request):

As a *Pro Se* litigant access to the docket is very important to me. I perceive that Judge Wilkinson has gone outside normal procedure, and potentially *ultra vires* of the law and rules of this state, to limit my access to due process. I am not one to make bald allegations, and therefore

I am attempting to find facts that may support or be dispositive to my perception. What I do know is that some of the orders defy logic and law, and I got an awful feeling in my gut about the why. You are the only member of the Judicial I have discussed this with. If we lose our Courts we lose our constitution. Any insight is much appreciated.

Respectfully,

Justin Holder

[Quoted text hidden]

5 attachments

Service - Gmail - Notification of Service for Case: C-21-CV-21-000420, Justin Holder vs. Scott Morral, et al. for filing Supporting Exhibit, Envelope Number: 9548832.pdf
175K

Order - 420-2.pdf
80K

Returned - Gmail - Filing Returned for Envelope Number: 9548832 in Case: C-21-CV-21-000420, Justin Holder vs. Scott Morral, et al. for filing Supporting Exhibit.pdf
90K

Odyssey File & Serve - Envelope Receipt - under review 5 -3 -22.pdf
202K

Submitted - Gmail - Filing Submitted for Case: C-21-CV-21-000420; Justin Holder vs. Scott Morral, et al.; Envelope Number: 9548832.pdf
115K

Justin Holder <jholder2004@gmail.com> Thu, May 12, 2022 at 11:55 AM
To: Kevin Tucker <kevin.tucker@mdcourts.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

2 mistakes corrected in red

---------- Forwarded message ---------
From: **Justin Holder** <jholder2004@gmail.com>
Date: Thu, May 12, 2022 at 11:50 AM
Subject: Re: [EXTERNAL] MPIA - Order to Review Justin Holders Filings before docket
To: Kevin Tucker <Kevin.Tucker@mdcourts.gov>

Honorable Clerk Tucker,

Good morning and thank you kindly for your email on your day off. Please do not feel obligated to respond until you are back in the office. I appreciate all the good work you do as Honorable Clerk.

I would like to premise our conversation by acknowledging I agree with your statement:

"Knowing that you are a registered user for the listed cases, all pleadings, including written orders, that are processed by my office can be viewed by you. Any “oral orders” that Judge Wilkinson may have issued would had to have happened during open Court and would be a part of the recorded record..."

I, being my own *pro se* advocate, enjoy the duty of compliance with the Orders when I submit a filing to the docket.

I have been using the MDEC system for a solid year, and as such have become accustomed to the typical data points and acknowledgement emails.

What I have noticed is that my filings in case C-21-CV-20-000371 and C-21-CV-21-000420 go "under review" before being docketed. This is what happened to the May 11th, 2022 Objection attached to my original email. A second example is attached as ***Odyssey File & Serve - Envelope Receipt - under review 5 -3 -22,*** a May 3rd, 2022 Objection that was served at 5/3/2022 12:16 PM EST but not docketed until 5/4/2022 2:43 PM EST.

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[Quoted text hidden]
[Quoted text hidden]

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5 attachments

Service - Gmail - Notification of Service for Case: C-21-CV-21-000420, Justin Holder vs. Scott Morral, et al. for filing Supporting Exhibit, Envelope Number: 9548832.pdf
175K

Order - 420-2.pdf
80K

Returned - Gmail - Filing Returned for Envelope Number: 9548832 in Case: C-21-CV-21-000420, Justin Holder vs. Scott Morral, et al. for filing Supporting Exhibit.pdf
90K

Odyssey File & Serve - Envelope Receipt - under review 5 -3 -22.pdf
202K

Submitted - Gmail - Filing Submitted for Case: C-21-CV-21-000420; Justin Holder vs. Scott Morral, et al.; Envelope Number: 9548832.pdf
115K

Kevin Tucker <Kevin.Tucker@mdcourts.gov> Tue, May 17, 2022 at 12:44 PM
To: Justin Holder <jholder2004@gmail.com>

Mr. Holder,

I hope that this simple answer suffices. We review all filings submitted through File and Serve, no matter the case, before accepting and/or docketing. You and all other filers, whether pro se or counsel, may see the "Under Review" designation at some point during clerk review process.

It is plausible that the clerk, after opening one or both of your referenced envelopes, may have been pulled away to answer a phone call, walked to the restroom or any one of a dozen other reasons before accepting the filings in the clerk's version of File and Serve.

It is also plausible that internet or server slowness caused the "Under Review" designation. The automatic system process of transferring pleadings from File and Serve (the web-based filing software) to Odyssey (the internal case-management system used by the Judiciary) can take from a few seconds to 30 minutes.

> *MDEC is an acronym for **MD E**lectronic **C**ourts which in include such software as File and Serve, Odyssey, DV Office, amongst many others. Many users, Judges and staff alike, use the term **MDEC** just like consumers use the word Saran Wrap, a brand-name, to refer to generic or store-brand plastic wrap. They mean essentially the same thing, but not.*

Finally, if a clerk inadvertently "opens" an envelope, but does not process that envelope, it is designated as "Under Review". I have different clerks that have the responsibility of opening envelopes as related to specific case types, and on occasion, a clerk may open an envelope from a case type that is not assigned to them.

As such, my office has no reason nor has been directed to delay the processing of any pleading filed by any user. This would include any of the pleadings that are filed by you and/or any counsel in any of your cases.

In reference to your original inquiry, I can only speculate. You filed the objection late in the day on May 11th (3:34 pm), a clerk may have been processing the envelope after 4:20 pm (??? I cannot see that info) and decided to continue processing the next day, or another unassigned clerk opened the envelope at 4:00 pm (???) and got out of it so that then assigned clerk could work it. Ultimately, an assigned clerk processed the envelope at 8:48 am on May 12th, but without asking me or a Judge for permission to do so.

If you still want me to make copies of all your orders, I will have to figure the cost and would be able to provide that information within 24 hours of your response.

Finally, although you may not consider “under review” a *data point* per your understanding of MDEC (sic), it is a common occurrence on our end. We constantly have to move envelopes to the correct queues for processing, clerks are barraged all day with numerous interruptions from phone calls and in-person pro se litigants while in the office or have to tend to courtroom processes when working as a courtroom clerk. These are all reasons that an envelope would be designated as under review, when in fact they were not really being processed at that time.

We, under no circumstance intentionally delay the process of any filing from any filer, pro se or counsel. The goal of the Court and my office is to provide fair and equal justice for all…

Respectfully,

Kevin R. Tucker – Clerk of Court

Circuit Court for Washington County

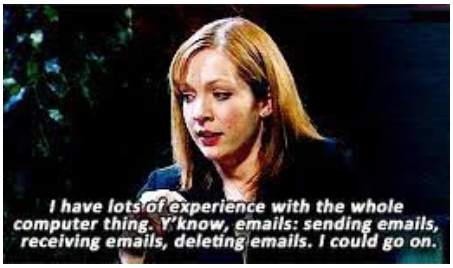
24 Summit Avenue

Hagerstown, MD 21740

OFFICE: 301-790-4972 ext: 265

CELL: 410-919-3869

kevin.tucker@mdcourts.gov


I have lots of experience with the whole computer thing. Y'know, emails: sending emails, receiving emails, deleting emails. I could go on.

Disclaimer: The office of the Clerk of the Circuit Court is committed to serving the citizens of Maryland. Every effort is made to provide accurate information and assistance regarding matters that are important to you. Please be advised, however, that we are prohibited, by law, from rendering legal advice.

[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Tue, May 17, 2022 at 2:37 PM
To: Adam Greivell <adam@greivelllawoffice.com>

[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Tue, May 17, 2022 at 2:44 PM
To: Kevin Tucker <Kevin.Tucker@mdcourts.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Dear Honorable Clerk,

Thank you kindly for the detailed response. At this time I will withdraw my request for the Public Records, and review the filing so I may request a more targeted search in the future if I find a need for additional clarification.

In reviewing your correspondence I did not find any indication of my second inquiry.

Which brings me to my Second area of curiosity:

1) On Mon, May 2, 2022 at 5:11 PM I filed a Line that was Submitted and Served, see ***Submitted - Gmail - Filing Submitted for Case/ C-***

21-CV-21-000420; Justin Holder vs. Scott Morral, et al.; Envelope Number/ 9548832 & ***Service - Gmail - Notification of Service for Case/ C-21-CV-21-000420, Justin Holder vs. Scott Morral, et al. for filing Supporting Exhibit, Envelope Number/ 9548832;***

2) On Tue, 5/3/2022 9:19 AM the attached Order was Docketed, see ***Order - 420-2.pdf;***

3) On Tue, May 3, 2022 at 11:19 AM the Line Submitted and Served Mon, May 2, 2022 at 5:11 PM, was returned in accordance with a Tue, 5/3/2022 9:19 AM Order, see **Returned - Gmail - Filing Returned for Envelope Number/ 9548832 in Case/ C-21-CV-21-000420, Justin Holder vs. Scott Morral, et al. for filing Supporting Exhibit.**

"The MDEC system shall record the date and time an electronically filed submission is received by the MDEC system. Subject to Rules 20-201(i) and 20-203, the date recorded shall be the effective date of filing and shall serve as the docket date of the submission filed." *Rule 20-202 - Effective Date of Filing*, Md. R. Elec. Fil'g & Case Mgmt. 20-202.

So in this case it would appear the May 2nd, 2022 filing was to be docketed at 5:11 PM and was subsequently removed after the docket date by an order issued after the filing was to have been docketed.

Would you be so kind as to indicate if the May 2nd, 2022 at 5:11PM filing was removed by the Clerk or by request of the Court?

Respectfully,

Justin Holder
[Quoted text hidden]

Kevin Tucker <Kevin.Tucker@mdcourts.gov> Wed, May 18, 2022 at 9:26 AM
To: Justin Holder <jholder2004@gmail.com>

Mr. Holder,

To address this specific inquiry, I need to explain how **FILE & SERVE** and **ODYSSEY** interact. As I alluded to in my last email, MDEC is just an acronym (MD Rule 20-101(k)). We utilize TWO separate and independent pieces of software to process case filings.

FILE & SERVE:

- All attorneys and registered pro se users MUST file their submissions using this software
- Clerks use this software to 1) review submissions as filed by attorneys and registered pro se users, and 2) eserve orders back to registered users

ODYSSEY:

- The case management system used by the Clerk to maintain the record (pleadings)
- Is only accessible to certain approved Judiciary users using the State network

STEP 1: a registered user uploads a document to **FILE & SERVE** and submits by either: 1) filing with the Court, 2) serving on another registered user, or 3) both filing with the Court and serving on other registered users. The document header at this time only reflects the date and time of submission, the Docket and E-FILED (location) information only has a place holder for future use.

E-FILED; <<CaseLocation>>
Docket: <<DocketDate>>; Submission: 5/17/2022 1:53 PM

STEP 2: the Clerk's Office reviews all submissions that are either 1) filed, or 2) filed and served (we never see items that are just served on other registered users).

STEP 3: if the filing is compliant to the applicable rules, then the submission is accepted.

STEP 4: an accepted submission is electronically transferred to **ODYSSEY**, our case management system (we have no control of this process and as I explained prior, this can take a few seconds or 30 minutes).

STEP 5: after the submission is electronically transferred to **ODYSSEY**, the electronic time stamp header is updated to reflect 1) the docket date (which is the same as the submission date) and the case location (Washington Circuit Court).

E-FILED; Washington Circuit Court
Docket: 5/12/2022 2:24 PM; Submission: 5/12/2022 2:24 PM

It is at this point that a submission (pleading) is considered **FILED** using the original submission date & time. For example, if you file a submission on Friday, May 13th at 4:29 pm, my clerk may not review/accept it until Monday, May 16th at 10:01 am, but the "time stamp" will reflect that the submission was filed on May 13th at 4:29 pm, **not** May 16th at 10:01 am.

In the case of your May 2nd Line, it was rejected during the **FILE & SERVE** review process on May 3rd, and it was never transmitted electronically to **ODYSSEY**, thus it was never part of the record. Neither the Clerk nor the Judge removed it from the record because it was never there in the first place. It is indicated on your attachment that we rejected the filing at 11:19 am on May 3rd.

I'm not an attorney, nor do I purport to be one, but MD Rule 20-202 is a bit vague in using the term MDEC in the explanation of capturing the date and time of a submission. MDEC could mean just **FILE & SERVE**, just **ODYSSEY**, maybe both. In any case, since the submission was rejected in **FILE & SERVE,** the electronic time stamp never updated, and nothing was transmitted to **ODYSSEY**.

If this had been filed in paper form, prior to MDEC (sic), we would not have time stamped it and would have handed the original document back to you at the counter. It would have never been placed in the paper jacket, thus never made part of the record.

I hope that this answers your question as posed.

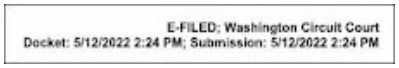
[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Wed, May 18, 2022 at 9:31 AM
To: Adam Greivell <adam@greivelllawoffice.com>

[Quoted text hidden]

8 attachments

image001.jpg
5K



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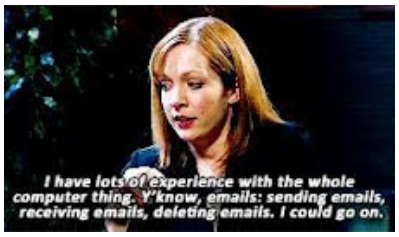
I have lots of experience with the whole computer thing. Y'know, emails: sending emails, receiving emails, deleting emails. I could go on.

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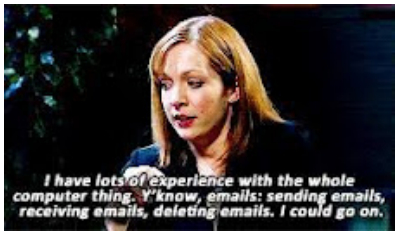
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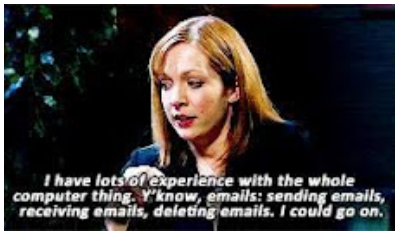
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image003.jpg
9K

Justin Holder <jholder2004@gmail.com> Wed, May 18, 2022 at 9:44 AM
To: Kevin Tucker <Kevin.Tucker@mdcourts.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Dear Honorable Clerk,

The detailed explanation is greatly appreciated. I had some understanding of how a paper gets docketed, but you cleared up any confusion.

Thank you kindly for taking the time to explain it in detail.

I still have 1 concern.

You stated:

"In the case of your May 2nd Line, it was rejected during the **FILE & SERVE** review process on May 3rd, and it was never transmitted electronically to **ODYSSEY**, thus it was never part of the record. Neither the Clerk nor the Judge removed it from the record because it was never there in the first place. It is indicated on your attachment that we rejected the filing at 11:19 am on May 3rd."

The Returned Filing Email was marked in Red "Per judge Wilkinson's Order on 5/3/22."

Return Reason(s) from Clerk's Office	
Court	4th Circuit
Returned Reason	Other
Returned Comments	Per Judge Wilkinson's Order on 5/3/22.

Document Details	
Case Number	C-21-CV-21-000420
Case Style	Justin Holder vs. Scott Morral, et al.
Date/Time Submitted	5/2/2022 5:11 PM EST
Filing Type	Supporting Exhibit
Filing Description	Exhibit 1 - CB-SB-QC
Activity Requested	EFileAndServe
Filed By	Justin Holder
Filing Attorney	
Lead Document	Exhibit 1 - CB-SB-QC.pdf
Lead Document Page Count	4

MODIFICATION OF THE MPIA:

Please modify my MPIA request sent May 11th, 2022 to request to:

Please provide the Public Record that would indicate the Judicial officer that added the returned Comments "Per judge Wilkinson's Order on 5/3/22." to the "**Filing Returned for Envelope Number/ 9548832" on May 3rd, 2022.**

Respectfully,

Justin Holder
[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Mon, Jun 6, 2022 at 11:07 AM
To: Kevin Tucker <Kevin.Tucker@mdcourts.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Honorable Clerk Tucker,

On May 18th, 2022 I made the following request for Public Information:

"**MODIFICATION OF THE MPIA:**

Please modify my MPIA request sent May 11th, 2022 to request to:

Please provide the Public Record that would indicate the Judicial officer that added the returned Comments "Per judge Wilkinson's Order on 5/3/22." to the "**Filing Returned for Envelope Number/ 9548832" on May 3rd, 2022."**

It is now June 6th, 2022 and I have had no response.

Would you kindly provide me with the Public Record I have requested?

Respectfully,

Justin Holder
[Quoted text hidden]

Kevin Tucker <Kevin.Tucker@mdcourts.gov> Wed, Jun 15, 2022 at 12:40 PM
To: Justin Holder <jholder2004@gmail.com>

Mr. Holder,

Please accept my apologies for not responding sooner. I believe that I had originally reviewed your original email on my state issued cell phone and it went to “read” status. When I returned to the office it was not in my mailbox for review. I found it when I periodically purge my mail folders of non-business related emails.

To respond to your modified request, the document was “rejected” as a result of the Order (Stay of Case) issued by Judge Wilkinson on 05/03/2022, which is attached.

Regards,

Kevin R. Tucker – Clerk of Court

Circuit Court for Washington County

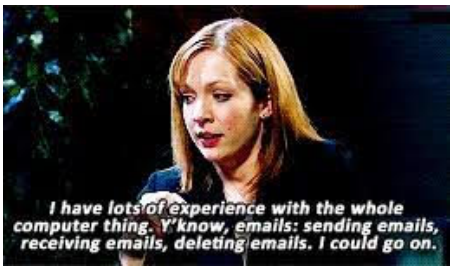
24 Summit Avenue

Hagerstown, MD 21740

OFFICE: 301-790-4972 ext: 265

CELL: 410-919-3869

kevin.tucker@mdcourts.gov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Disclaimer: The office of the Clerk of the Circuit Court is committed to serving the citizens of Maryland. Every effort is made to provide accurate information and assistance regarding matters that are important to you. Please be advised, however, that we are prohibited, by law, from rendering legal advice.

From: Justin Holder <jholder2004@gmail.com>
Sent: Monday, June 6, 2022 11:08 AM
To: Kevin Tucker <Kevin.Tucker@mdcourts.gov>
Subject: Re: [EXTERNAL] MPIA - Order to Review Justin Holders Filings before docket

Honorable Clerk Tucker,

On May 18th, 2022 I made the following request for Public Information:

"**MODIFICATION OF THE MPIA:**

Please modify my MPIA request sent May 11th, 2022 to request to:

Please provide the Public Record that would indicate the Judicial officer that added the returned Comments "Per judge Wilkinson's Order on 5/3/22." to the "**Filing Returned for Envelope Number/ 9548832" on May 3rd, 2022."**

It is now June 6th, 2022 and I have had no response.

Would you kindly provide me with the Public Record I have requested?

Respectfully,

Justin Holder

On Wed, May 18, 2022 at 9:44 AM Justin Holder <jholder2004@gmail.com> wrote:

> Dear Honorable Clerk,
>
> The detailed explanation is greatly appreciated. I had some understanding of how a paper gets docketed, but you cleared up any confusion.
>
> Thank you kindly for taking the time to explain it in detail.
>
> **I still have 1 concern.**
>
> You stated:
>
> "In the case of your May 2nd Line, it was rejected during the **FILE & SERVE** review process on May 3rd, and it was never transmitted electronically to **ODYSSEY**, thus it was never part of the record. Neither the Clerk nor the Judge removed it from the record because it was never there in the first place. It is indicated on your attachment that we rejected the filing at 11:19 am on May 3rd."
>
> The Returned Filing Email was marked in Red "Per judge Wilkinson's Order on 5/3/22."

[Quoted text hidden]
[Quoted text hidden]

C-21-CV-21-420 Order (Stay of Case).pdf
44K

Justin Holder <jholder2004@gmail.com> Wed, Jun 15, 2022 at 1:15 PM
To: Kevin Tucker <Kevin.Tucker@mdcourts.gov>

Dear Honorable Clerk Tucker,

Apology Accepted, and thank you kindly for your response.

I read the May 3rd, 2022 order and the reason for rejection listed on the returned filing. I do not recognize the rejection to be lawful and within the rules, or in accord with due process.

I specifically requested: "Please provide the Public Record that would indicate the Judicial officer that added the returned Comments "Per judge Wilkinson's Order on 5/3/22." to the "**Filing Returned for Envelope Number/ 9548832" on May 3rd, 2022."**

You responded with an order Honorable Judge WIlkinson. If the "Judicial Officer" that physically removed my paper from the docket was Judge Wilkinson, than I do not require a further response.

However if the Public Record reflects that a Judicial Officer other than Judge Wilkinson physically removed my paper from the docket (even if that officer was acting as agent for Judge Wilkinson) please produce the Public Record that indicates the name of the Judicial Officer that removed my paper with **"Filing Returned for Envelope Number/ 9548832"** from the docket.

Honorable Clerk, my due process rights are of the utmost importance to me. Any denial of due process is always in the public interest and I am requesting redress of the same. I must have all lawful access to the Court to defend and prosecute my claimed rights and interest. I hope the Clerk can also see the public interest in my request.

Without a response by June 21st, 2022 at 5PM I will assume it was Judge Andrew Wilkinson whom removed my paper from the docket.

Respectfully,

Justin Holder
[Quoted text hidden]

Kevin Tucker <Kevin.Tucker@mdcourts.gov> Tue, Jun 21, 2022 at 4:27 PM
To: Justin Holder <jholder2004@gmail.com>

Mr. Holder,

In short, a person did not physically remove anything from the docket. As I explained prior, it was never accepted through File and Serve per the March 3, 2022 Case Management Order as issued by Judge Wilkinson.

File and Serve only electronically moves **accepted** documents to Odyssey (the docket), those rejected are “returned” to the filer.

[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Tue, Jun 21, 2022 at 5:02 PM
To: Adam Greivell <adam@greivelllawoffice.com>

---------- Forwarded message ---------
From: **Kevin Tucker** <Kevin.Tucker@mdcourts.gov>
[Quoted text hidden]
[Quoted text hidden]

12 attachments

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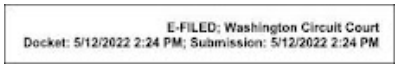

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Justin Holder <jholder2004@gmail.com> Mon, Jun 27, 2022 at 6:23 PM
To: Kevin Tucker <Kevin.Tucker@mdcourts.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>

Dear Honorable Clerk Tucker,

Thank you for writing back to explain the removal of my paper from the docket. I understand we disagree on the application of MD Rule 20-202. I was in trial last week and did not have a chance to respond.

I am writing to specifically request a Public Record:

On June 21st, 2022 at 4:27 Pm you explained the return of my paper as"...those **rejected** are 'returned' to the filer." [Emphasis Added]. By the description you provide, a paper must be "rejected" manually by a judicial officer. Whether that public record is stored electronically, or kept in paper format I would like to request the following record:

Please provide the Public Record that would indicate the Judicial officer that "rejected" my May 2nd, 2022 paper that was returned to me in the **"Filing Returned for Envelope Number/ 9548832" on May 3rd, 2022, with** Comments "Per judge Wilkinson's Order on 5/3/22." in red.
[Quoted text hidden]
[Quoted text hidden]

Kevin Tucker <Kevin.Tucker@mdcourts.gov> Fri, Jul 8, 2022 at 8:48 AM
To: Justin Holder <jholder2004@gmail.com>

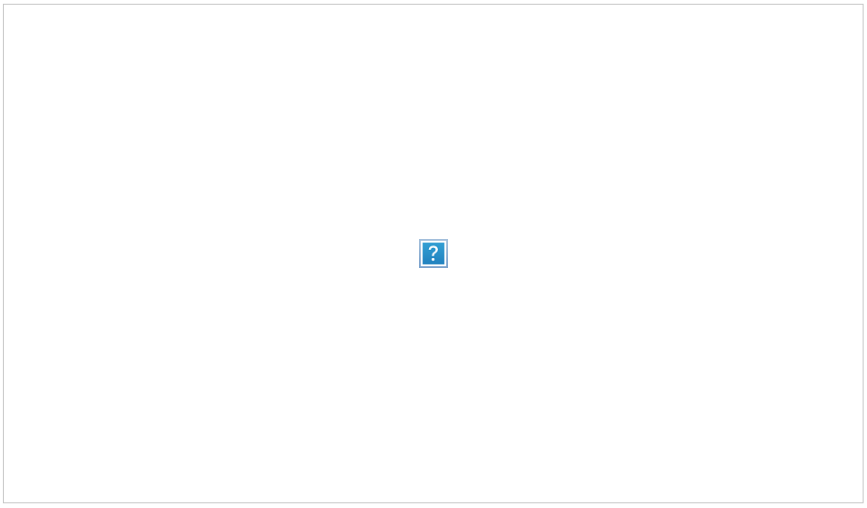
Mr. Holder,

It seems that we are going to go round and round on this subject endlessly. Against my better judgment, I am going to provide you with an image from our version of File and Serve. This is not a public record, but I hope that you get a sense of what I've been trying to explain to you.

Upon receipt of envelope 9548823, my Deputy Clerk reviewed your filing and rejected it as it was contrary to the Case Management Order as signed by Judge Wilkinson on March 3, 2022.

It was not removed from the docket (Odyssey) by a “judicial official”, i.e. Judge Wilkinson, other than by his explicit instruction as codified in the Case Management Order as signed on March 3, 2022. A Judge does not have access to File and Serve, and do not add/remove entries from Odyssey, our case management system.

This filing was rejected by one of my Deputy Clerks during the File and Serve review process per the Case Management Order as signed by Judge Wilkinson on March 3, 2022. See diagram below illustrating the filing/review process:



The arrows indicate direction of information flow. Again, this filing was never electronically transmitted to Odyssey, the official record. As indicted by the red line/arrow, envelope 9548823 was returned to you during the File and Serve review process.

[Quoted text hidden]

Justin Holder <jholder2004@gmail.com> Fri, Jul 8, 2022 at 8:55 AM
To: Adam Greivell <adam@greivelllawoffice.com>
Cc: Jacob Weddle <jweddle@rwclawyers.com>

[Quoted text hidden]

17 attachments

I have lots of experience with the whole computer thing. Y'know, emails: sending emails, receiving emails, deleting emails. I could go on.

image001.jpg
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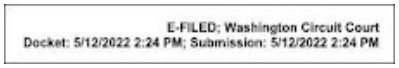

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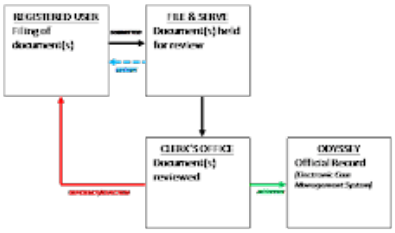

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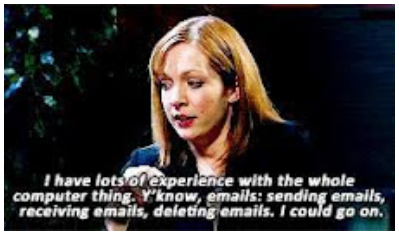
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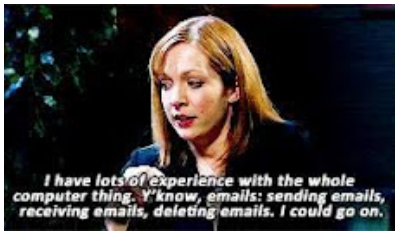
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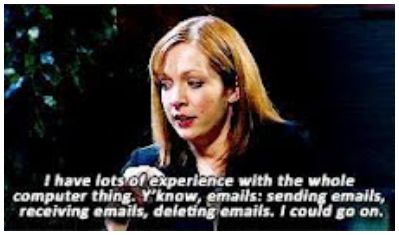
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Justin Holder <jholder2004@gmail.com> Fri, Jul 8, 2022 at 9:12 AM
To: Kevin Tucker <Kevin.Tucker@mdcourts.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>, Jacob Weddle <jweddle@rwclawyers.com>

Dear Honorable Clerk Tucker,

Thank you for your email.

I appreciate the transparency.

I do interpret the record produced related to the removal of my paper from the docket; is in fact public.

It appears we have a Justiciable Controversy as to the lawfullness of the removal of my paper.

****
Settlement offer
Would the Honorable Clerk care to settle for the truth and $5?

Please take 10 days to review our correspondence and the law. Perhaps run this by Judge Wilkinson or another acceptable advisor.

I can assure you of 3 ideals:

I appreciate the Courts and have great faith;

I take my due process very seriously; and

I hold an innocent mistake harmless.

I really like the job you are doing and prefer to just find a resolution and move forward.

I will not accept that a clerk can simply remove my papers from the docket, and I lose my right to due process.

I know the Clerk understands me, and that is why I am patient. Please put yourself in my Pro se shoes and walk a mile if you could please.

How can I protect my rights, if I do not even have access to the docket?

****

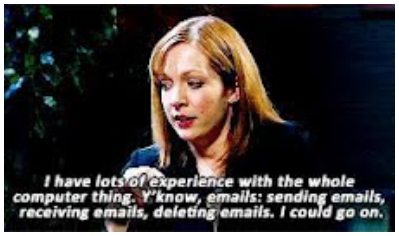
Please thank all the clerks for their hard work.

Enjoy your weekend,

Justin Holder

[Quoted text hidden]

17 attachments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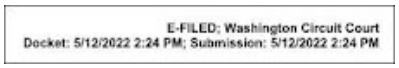

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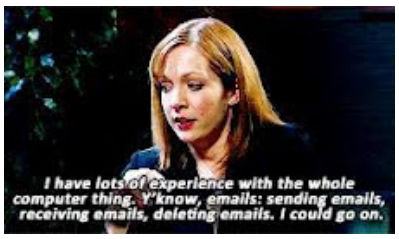
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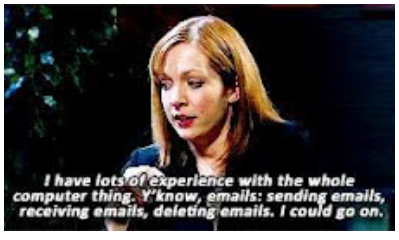
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image001.jpg
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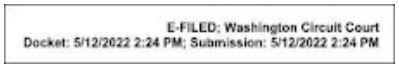

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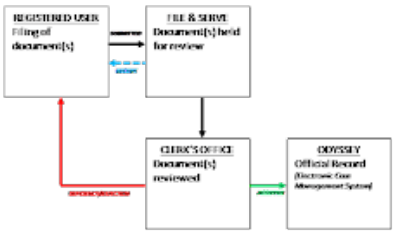

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Kevin Tucker <Kevin.Tucker@mdcourts.gov> Tue, Jul 19, 2022 at 1:21 PM
To: Justin Holder <jholder2004@gmail.com>

Justin,

I have no response to your settlement offer except to say that this is not the way that my duty as Clerk works and it would be unethical for me to consider any monetary offer that you make. I do not have to run this by a Judge or any other advisor, it is not in my character, personally or professionally, to consider such an offer. I will respectfully ask that you not make such an offer again, whether in jest or not.

On to the languishing subject at hand, your rejected filing.

To begin, I don't think that there is any other way for me to explain that your document(s) from May 2nd were **NEVER** accepted, thus never entered into the record for your case. But in response I will offer this:

> After recently speaking with a colleague, we were discussing the various issues that we encounter from time to time and the subject of rejecting electronic submissions came up. During our conversation, this colleague thought that something had recently changed regarding this process. After some research, I discovered that in April of this year, an updated processing guide had been created by the Adminstrative Office of the Courts. An event code and process had been created to capture rudimentary information that an electronic filing has been rejected. The intent was to provide some information about a rejected filing, e.g. envelope number, name of document(s), etc., but **not** to store the actual rejected document(s) image(s). Again, due to the nature of the electronic rejection process, the documents are not transmitted from File and Serve to Odyssey (case management system/record). As a point of reference, this process was **not** created by a rule per se, but because a rule gives the State Court Administrator some autonomy to create processes/forms that involve electronic filing deficiencies of which rejections are lumped in. That being said, unlike the District Court, this was **not a directive** that is required to be instituted by Adminstrative Clerks of the District Court without question. As such, the information about this change was not, obviously, well publicized and in the end is guide for what the Clerk's of Court should do.

In light of this "new" information, I have added the appropriate event to the case to memorialize the rejection. As stated above, the images **WILL NOT** be attached to this event as they were rejected and were **NEVER** part of the case record.

In response to your comments in the box below, I must unequivocally disagree with your statement and characterization of the way that we process case filings. My Deputy Clerk **DID NOT REMOVE** anything from the docket, nor did I, nor did a Judge. As I have explained exhaustively and repetitively (see the thread below), an electronic filing that is rejected **NEVER** transmits to the electronic case record, period and with no ambiguity. To turn your phrase around, "walk a mile in my shoes." It is a **FACT** that a rejected electronic filing **NEVER** transmits to

the electronic case record, hence it **CANNOT** be removed. This is something that I do not control, nor can I change, it is simply the way that these two independent software programs interact.

> *I will not accept that a clerk can simply remove my papers from the docket, and I lose my right to due process.*
>
> *I know the Clerk understands me, and that is why I am patient. Please put yourself in my Pro se shoes and walk a mile if you could*

I am copying this to Judge Wilkinson as a blind copy so that he is aware of the change that I made to the case and should you make some claim to the Court.

With this new information, I consider this issue resolved.

Respectfully,

Kevin R. Tucker – CCE

[Quoted text hidden]

image003.emz
3K

Justin Holder <jholder2004@gmail.com> Tue, Jul 19, 2022 at 1:26 PM
To: Adam Greivell <adam@greivelllawoffice.com>

---------- Forwarded message ---------
From: **Kevin Tucker** <Kevin.Tucker@mdcourts.gov>
[Quoted text hidden]
[Quoted text hidden]

image003.emz
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Justin Holder <jholder2004@gmail.com> Tue, Jul 19, 2022 at 1:42 PM
To: Kevin Tucker <Kevin.Tucker@mdcourts.gov>
Bcc: Adam Greivell <adam@greivelllawoffice.com>, Jacob Weddle <jweddle@rwclawyers.com>

Dear Honorable Clerk Tucker,

Good afternoon. Thank you kindly for your reply.

In general and as a whole I support our government, the Court and you Mr. Honorable Clerk. I have faith in our justice system and due

process. I would not waste time and resources if I had lost faith.

I will not just accept that the clerk or a judge can unilaterally remove my paper or refuse to accept my papers onto the docket. In the event I am aggrieved by a court's action or ruling related to my filing, the appellate court will ask to see the record of the case and without due process there will be no record. The Clerk does have authority to reject a filing under certain circumstances, and the Court has the authority to "strike" a filing for cause. The court does not have the authority to order the clerk not to accept a filing, and the clerk does not have the authority to "strike" a filing for cause. The separation of power is how justice works.

I greatly appreciate your response. I will do my best to walk in your shows, and I cast no stones. I really was hoping we could work together to make due process better for all.

Just to clarify when I said "5$", I was referring to "nominal damages", just an admission it was not fair. I do not think we have come to an agreement unfortunately, however I will make my request for redress at a meaningful time in a meaningful way. I accept and respect your request that we conclude our discussion.

Thank you and the Court for the Honorable service to Washington County.

Respectfully,

Justin Holder

[Quoted text hidden]

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES	*	
	*	
Plaintiff	*	
v.	*	CASE NO.: C-21-CV-20-000430
	*	
JUSTIN HOLDER, *et* al.;	*	
	*	
Defendant(s)	*	

* *

BENCH TRIAL MEMORANDUM IN LAW

COMES NOW Defendant, Justin Kyle Holder, in proper person, and files this BENCH TRIAL MEMORANDUM IN LAW, in accordance with the Court's request, and states:

COMMON LAW AUTHORITY

In English Common law *Ad medium filum aqua sub publicum*[1] has been recognized as the presumption in the grant of land bordering streams as codified in Md. Real Property Law, see *ANNAPOLIS ROADS v. Lindsay*, 45 A.3d 749, 205 Md. App. 270 (2012) at p. 766 - 768:

"Md. Ann.Code, Art. 21 § 5-114 (1957, 1973 Repl.Vol.) provides:

> Any deed, will, or other instrument which conveys land in this State, binding on any street or highway, or when any street or highway shall be one or more of the lines thereof, shall be construed to pass to the devisee, donee or grantee therein, all the right, title, and interest of the devisor, donor, or grantor in the street or highway; provided, however, to the extent the devisor, donor or grantor owns other land on the opposite side of the street or highway, then the deed, will, or other instrument shall be construed to pass the right, title, and

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[1] See *Dep't of Natural Resources .v. France,* 357 A.2d 78, 277 Md. 432 (1976) citing *Linthicum v. Shipley,* 140 Md. 96, 116 A). 871. "The prima facie presumption is that riparian proprietors of non-navigable (non-tidal) streams own the soil covered by such rivers *ad filum medium aquae*" and "*sub publicum*" *Browne v. Kennedy*, 5 Harr. & J. 195 (Md. 1821). Also See *Fisher v. Haldeman*, 61 U.S. 186, 15 L. Ed. 879 (1858); *Iowa v. Illinois*, 147 U.S. 1, 13 S. Ct. 239, 37 L. Ed. 55 (1893); *Bailey v. Driscoll*, 117 A.2d 265, 19 N.J. 363 (1955); *R. v. Nikal*, 1996 S.C.R.1 1013 (1996); *Lord v. Commissioners of Sydney*, 12 Moo. P.C. 473, 12 Moore P.C. 473 (1859); *Arnold v. Mundy*, 6 N.J.L. 1 (1821);*R. v. Lewis*, 1996 S.C.R.1 921 (1996).

> interest of the devisor, donor, or grantor only to the center of that portion of the street or highway upon which the two (or more) tracts co-extensively bind. The foregoing provisions shall be inapplicable in either of the above instances if the devisor, donor or grantor shall in express terms in the writing by which the devise, gift or conveyance is made, reserve to himself all the right, title and interest to the said street or highway.

See Boucher v. Boyer, 301 Md. 679, 687, 484 A.2d 630 (1984) ('This statute, which applies to private and public streets, extends the common law presumption that title to the center of a binding street passes to the grantee.') (citations omitted). This statute was later recodified at Md. Code (1981 Repl.Vol.), R.P. § 2-114, effective July 1, 1974, which provided as follows:

> Unless a contrary intention appears in the deed, will, or other instrument, if any deed, will, or other instrument grants or bequeaths land binding on any street or highway, or if any street or highway is one or more of the lines of the land, the deed, will, or other instrument passes to the legatee, donee, or grantee, all the right, title, and interest of the testator, donor or grantor in the street or highway. Except that to the extent the testator, donor, or grantor owns other land on the opposite side of the street or highway, the deed, will, or other instrument passes the right, title, and interest of the testator, donor, or grantor only to the center of that portion of the street or highway on which the two or more tracts coextensively bind. [footnote - MD. Real Property Code Ann. § 2-114 omitted]

See Boucher, 301 Md. at 686 n. 1, 484 A.2d 630.

In *Callahan v. Clemens,* 184 Md. 520, 526, 41 A.2d 473 (1945), the Court of Appeals explained that Art. 21, § 5-114, 'provides that any conveyance binding upon a highway carries to the grantee title to the center thereof, in the absence of an express provision to the contrary. This applies to a private as well as a public way. The statute merely extends a presumption that was

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recognized at common law.'[2] (Citations omitted). In *Bowie v. W. Md. R.R. Terminal Co.,* 133 Md. 1, 11-12, 104 A. 461 (1918), the Court of Appeals explained:

> 'Reasons for These Rules — **The natural presumption where a deed conveys land bordering on a stream or highway is, that the grantor means to convey what he owns, and not to reserve a strip of land of no value to him, but the loss of which to the grantee might be productive of great injury.** He has power by apt words to reserve what and as much as he pleases, or so to frame the language of his conveyance as to limit the land conveyed to the line of the stream or highway, without extending further, and in all such cases, courts are bound to give effect to his expressed intention. But in the absence of words showing such an intention, it is not presumed that the grantor intended to retain in himself the fee to the street or stream when he has parted with the adjoining land. **Therefore it may be said to be a universal rule, that a deed giving a stream as a boundary will convey title to the center of the stream or to low or high water mark, *depending upon how far the grantor's title extends.*** By such a description the grantor will convey all that he owns, unless a contrary intent appears from the language of the deed.
> **The deed is taken most strongly against the grantor in the application of this rule and courts will not favor the presumption that he has retained title to the bed of the stream**.'" (Emphasis *Added* and **Supplied**)

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[2] In *Peabody Heights Co. v. Sadtler,* 63 Md. 533, 536-37 (1885), the Court of Appeals described the common law as follows: "The established inference of law is, that a conveyance of land bounded on a public highway carries with it the fee to the centre of the road, as part and parcel of the grant. The idea of an intention in the grantor to withhold his interest in a road to the middle of it, after parting with all his right and title to the adjoining land is never to be presumed. It would be contrary to universal practice; and it was said, in *Peck v. Smith,* 1 Conn. 103 (1814), that there was no instance where the fee of a highway, as distinct from the adjoining land, was ever retained by the vendor. It would require an express declaration, or something equivalent thereto, to sustain such an inference; and it may be considered as the general rule, that a grant of land bounded on a highway or river carries the fee in the highway or river to the centre of it, provided that the grantor at the time owned to the centre, and there be no words or specific description to show a contrary intent. But it is competent for the owner of a farm or lot, having one or more of its sides on a public highway, to bound it by express terms on the side or edge of the highway, so as to rebut the presumption of law, and thereby reserve to himself his latent fee in the highway. He may convey the adjoining land without the soil under the highway, or the soil under the highway, without the adjoining land. If the soil under the highway passes by a deed of the adjoining land, it passes as parcel of the land, and not as an appurtenant." 3 *Kent Comm.,* 433.

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The Court In *Bowie v. W. Md. R.R. Terminal Co.,* 133 Md. 1, 11-12, 104 A. 461 (1918) affirming centuries of common law that has never, nor should it ever be, overturned:

> "Deeds: abutting on streets or navigable waters; middle of street or stream; *Browne v. Kennedy*, 5 H. J. 195, affirmed.
>
> * * *
>
> JUDGE BUCHANAN said: 'It is very certain that by the common law the right was in the King of England; and it seems equally clear to me, that he had the capacity to dispose of it *sub modo*. Whatever doubts are entertained on the subject, they probably have arisen from inattention to the distinction between the power of granting an exclusive privilege in violation or restraint of a common piscarial [fishing] right or other common right, as that of navigation, and the power of granting the soil *aqua cooperta,* subject to the common user. The subject has, *de communi jure,* an interest in a navigable stream, such as a right of fishing and of navigating, which can not be abridged or restrained by any charter or grant of the soil or fishery since *Magna Charta* at least. But the property in the soil may be transferred by grant, *Hargrave's Law Tracts,* 17, 22, 36, 37 — subject, however, to the *jus publicum,* which can not be prejudiced by the *jus privatum* acquired under the grant. This distinction runs through all the books, and wherever grants have been held not to pass the soil, it was not because the King had not the capacity or right to grant it, but because there were not apt words in the grant to effect the purpose.'
>
> *.*.*
>
> Then on page 206 he said: 'If, therefore, where a man, having an estate through which a private river runs, conveys away his land lying on one side of the stream and describes it as bounding on the river, the purchaser will, by operation of law, hold to the middle, it would seem, by parity of reason, that if the same man, having an estate through which a public river runs, the soil of the bed of which makes a part of his estate as in the case of a private river, conveys away the land lying on one side, and makes the river the boundary, the purchaser would by the same operation of law be entitled to hold, in respect of the right of soil, to the middle of the stream.'
>
> * * *
>
> JUDGES JOHNSON and MARTIN concurred in that opinion. JUDGE EARLE dissented... Although that case has been cited at least fourteen times (see *Shepard's Md. Cit*.) it has never been overruled, and it might effect titles to land to overrule a case which had been accepted as law for so many years. ... The decision in *Browne* v. *Kennedy* was a logical one, as the general principle

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> is that, in the absence of a statute regulating it, the extent to which a deed of an owner of land abutting on a street or stream goes depends upon how far his title extends, unless he limits the conveyance by appropriate terms.
>
> In 2 *Devlin on Real Estate,* Sec. 1028, it is said the rule is that when lands are bounded by navigable streams or tidewaters, the grantee's right extends only to high-water mark, but that is because it is very unusual for the grantor to own the bed of a navigable stream, and if he does, according to *Browne* v. *Kennedy,* the same rule applies as in case of non-navigable waters. After giving some illustrations in Section 1028, the author in Section 1028 A gives reasons which are very applicable to this case when we keep in mind *Browne* v. *Kennedy*. That section, in part, is:
>
> 'Reasons for These Rules [see *Annapolis Roads supra*].'
>
> In the note to the case of *Hanlon* v. *Hobson,* 24 Col. 284, as reported in 42 *L.R.A.* 552, the annotator says: 'A grant bounding on a stream or on tide water will be held to carry all the land owned by the grantor, in the absence of anything to show an intention not to do so. If the grantor owns to the thread of the stream, the grantee will also do so.' See also *Braxon* v. *Bressler,* 64 Ill. 489; *Brooklyn* v. *Smith,* 104 Ill. 429; *Richardson* v. *Prentiss,* 48 Mich. 90; *Hardin* v. *Jordan,* 140 U.S. 380; *Boston* v. *Richardson,* 95 Mass. 155. Although some of these cases are controlled by statutes or ordinances, the principles are discussed."

Common law authority on Public waterways *eg* "waters of the State" extending to the floodplains is discussed in *Dep't of Natural Res. v. Ocean City*, 332 A.2d 630, 274 Md. 1 (1975): "This contention seems to be based primarily upon Article IV of the Charter of Maryland, 20 June 1632, by which Charles I granted to Caecilius Calvert, Lord Baltimore

> '...with the fishings of every kind of fish, as well of whales, sturgeons, and other royal fish, as of other fish, in the sea, bays, straits or rivers, within the premises, and the fish there taken: ...' 1 Maxcy, Laws of Maryland 1, 2 (1811).
>
> ....and then subjected the grant to the reservation contained in Article XVI:
>
> '...Saving always to US, our heirs and successors, and to all the subjects of our kingdoms of England and Ireland, of US, our heirs and successors, the liberty of fishing for sea-fish, as well in the sea, bays, straits, and navigable rivers, as in the harbours, bays, and creeks of the province aforesaid, and *the privilege of salting and drying fish on the shores of the same province;...'*

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The scope of the rights reserved is strikingly reminiscent of Roman law.[3] This is not surprising, since Justinian's Institutes were well known in Britain by the 13th century. *See* 1 F. Pollock & F. Maitland, The History of English Law 119 (2d ed. 1905)."

"At the outset, it seems to us that no analogy can be drawn to the common law rule pertaining to non-tidal stream boundaries in undertaking to fix a boundary upon navigable waters. Although it is true 'that a grant, by the owner of the bed of a non-navigable stream, of land bounding thereon, conveys, even without express language, ownership to the middle of the stream.' *Linthicum v. Shipley*,140 Md. 96, 99, 116 A. 871, 872 (1922); *Day v. Day*, 22 Md. 530 (1865); *Browne v. Kennedy*, 5 H. J. 195 (1821), a person owning land, abutting on navigable water, where the land under the navigable water is owned by the state, owns title only to the high water mark — subject of course to certain riparian rights as an incident to his ownership of such land. *Van Ruymbeke v. Patapsco Industrial Park*,261 Md. 470, 475, 276 A.2d 61, 64 (1971); *Toy v. Atlantic Gulf and Pacific Co*.,176 Md. 197, 206, 4 A.2d 757, 762 (1939); *Smoot Sand and Gravel Co. v. Columbia Granite and Dredging Corp*.,146 Md. 384, 388, 126 A. 91,

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3 T. Cooper, The Institutes of Justinian, Book 2, Title 1, 67-68 (1812):
"§ 1

"Things common to mankind by the law of nature, are the air, running water, the sea, and consequently the shores of the sea; no man therefore is prohibited from approaching any part of the sea-shore, whilst he abstains from damaging farms, monuments, edifices, & c. which are not in common as the sea is."

* * *

"§ 3

"All that tract of land, over which the greatest winter flood extends itself, is the sea-shore."

* * *

"§ 5

"The use of the sea-shore, as well as of the sea, is also public by the law of nations; and therefore any person may erect a cottage upon it, to which he may resort to dry his nets, and hawl them from the water; for the shores are not understood to be property in any man, but are compared to the sea itself, and to the sand or ground which is under the sea."

The Latin text of the Institutes uses the word *casa* in § 5 which is translated as *cottage.* Alternate translations are *cabin, shed,* or *hut.* The Latin text of the Maryland Charter uses the words *casa* (cabin) and "tuguriola." *Compare tugurium* (hut). *See* The White Latin Dictionary 97, 622 (1948).

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92 (1924). See also *Green v. Eldridge*,230 Md. 441, 446, 187 A.2d 674, 676 (1963)." *Dep't of Nat. Resources v. France*, 277 Md. 432, 450 (Md. 1976)

"The inherent common law right is to the water's use, and that, of course, presupposes the concomitant right of access." *Wicks v. Howard*, 388 A.2d 1250, 40 Md. App. 135 (Ct. Spec. App. 1978). See also *People's Counsel for Baltimore Cnty. v. Md. Marine Mfg. Co*., 316 Md. 491, 493 n.1 (1989):

> "There are several rights which are enjoyed by the riparian owner. Not the least of these is the right to the flow of water by the riparian property in its natural state. *Paper Company v. Zeitler,* 180 Md. 395, 397, 24 A.2d 788 (1942). The riparian proprietor also has a right to reasonable use of the water, subject to the same right of every other riparian owner, for legitimate domestic, agricultural and manufacturing purposes. *Id.; Kelly v. Nagle,* 150 Md. 125, 137-38, 132 A. 587 (1926).
>
> * * *
>
> The rationale behind this right, 'the sole purpose of the rule, was to assure to the riparian owner that he would never be cut off from his access to water.' *Bd. of Pub. Works v. Larmar Corp.,* 262 Md. 24, 36, 277 A.2d 427 (1971). *See also Steinem v. Romney,* 233 Md. 16, 23, 194 A.2d 774 (1963) ('[the] fundamental riparian right — on which all others depend, and which often constitutes the principal value of land — [is] access to water'). We have noted that the right of access to the water is fundamental when 'assessing the changes which have occurred in riparian rights down the corridor of years.' *Id. See also Rayne v. Coulbourne,* 65 Md. App. 351, 500 A.2d 665 (1985)."

"The right to navigate on navigable waters is a public right, not one that attaches only to the owner of riparian property. 'The public [has] a right, at common law, to navigate over every part of a common navigable river....' *Garitee v. M. & C.C. of Balto.,* 53 Md. 422, 436 (1880). As the Supreme Court of Ohio has put it:

> Every riparian owner has the right of ingress and egress between his land and the water. In addition, as a member of the public, he has the right to travel on navigable streams. It is important to distinguish these rights. The right to go from his land to the river and from the river to his land is a private property right of the riparian owner. Navigation on public waters is

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> exclusively a public right. Everyone has an equal right to the use of the water for travel and transportation.

State v. Masheter, 1 Ohio St.2d 11, 13, 203 N.E.2d 325, 327 (1964). And as another court said, regarding a riparian owner's attempt to obtain removal of a private bridge over a navigable channel,

> 'An obstruction in front of one's own premises may prevent him from entering upon the highway, and thus interfere with a peculiar right. But when he is once upon the highway he is a traveler, like the rest of the public; and though an obstruction at a distance may as effectually prevent ingress and egress as when it is opposite his door, yet the right to pass along the way is one which he shares in common with the general public.'

Whitehead v. Jessup, 53 F. 707, 709 (E.D.N.Y. 1893) (quoting J. Gould, *Waters* 247-248 (2d ed. 1891))." *Becker v. Litty*, 566 A.2d 1101, 318 Md. 76 (1989).

STATUTORY AUTHORITY

1. MD. Environment Code Ann. § 5-101: "(i) 'waters of the State' include: ...(4) All ponds, lakes, rivers, streams, public ditches,...; and (5) The floodplain of free–flowing waters determined by the Department on the basis of the 100–year flood frequency."
2. "**A.** General. **(1)** ...Maryland's -waters are organized by sub-basin. For most Class I, I-P, III, III-P, IV, or IV-P waters,....**Q.** Sub-Basin 02-14-05: Upper Potomac River Area....(d) Little Antietam Creek and all tributaries" *Md. Code Regs. 26.08.02.08*
3. MD. Environment Code Ann. § 5-503 "(a) (1) A person shall obtain, on written application to the Department, a permit from the Department to: (i) Construct, reconstruct, or repair any reservoir, dam, or waterway obstruction; ...Change, in any manner, in whole or part the course, current, or cross section of any stream or body of water within the State, **except tidal waters.**" (Emphasis Supplied)

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4. MD. Local Government Code Ann. § 1-1311[4] "(a) A county or municipality, in developing a construction ...[that] crosses a waterway, shall consider any reasonable and appropriate measures to provide or improve in the vicinity of the bridge or other transportation facility **water access for fishing, canoeing, kayaking, or any other nonmotorized water dependent recreational activity.**" (Emphasis Supplied)
5. "**A.** General. **(1)** The determination of the designated use of a water body shall include consideration of the following factors: **(a)** Existing conditions; and **(b)** Potential uses which may be made possible by anticipated improvements in water quality. **(2) The actual uses of surface water are not limited to those designated in this chapter**. **Any reasonable and lawful use is permitted provided that the surface water quality is not adversely affected by the use. B.** Specific Designated Use Classes. **(1)** Class I: **Water Contact Recreation**,...includes waters that are suitable for: **(a) Water contact sports; (b) Play and leisure time activities where individuals may come in direct contact with the surface water; (c) Fishing; ...(5)** Class III:...includes all uses identified for Class I [and]...**(6)** Class III-P:.. includes: **(a)** All uses identified for Class III waters; and **(b)** Use as a public water supply." (Emphasis Supplied) *Md. Code Regs. 26.08.02.02*
6. MD. Criminal Law Code Ann. § 6-402 "(a) A person may not enter or trespass on property that is posted conspicuously against trespass by:...(2) paint marks that: ... are made on trees or posts that are located: 1.at each road entrance to the property; and 2. **adjacent to public roadways, public waterways,** ..." (Emphasis Supplied)
7. MD. Real Property Code Ann. § 2-114 "(a) Except as otherwise provided, any deed, will, or other instrument that grants land binding on any street or highway, or that includes any street or highway as 1 or more of the lines thereof, shall be construed to pass to the devisee, donee, or grantee all the right, title, and interest of the devisor, donor, or grantor (hereinafter referred to as the transferor) in the street or highway for that portion on which it binds...."

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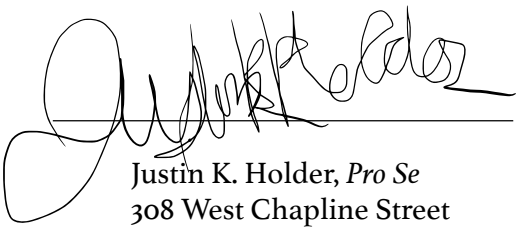
[4] See Exhibit 3, Final Approval of House Bill 0797 - Chapter 140 of the Acts of 2013.

8. "This regulation defines the term 'navigable waters of the United States' as it is used to define authorities of the Corps of Engineers. It also prescribes the policy, practice and procedure to be used in determining the extent of the jurisdiction of the Corps of Engineers and in answering inquiries concerning 'navigable waters of the United States.. This definition does not apply to authorities under the Clean Water Act which definitions are described under 33 CFR parts 323 and 328."[5] 33 C.F.R. § 329.1[6]
9. "A stream may be navigable despite the existence of falls, rapids, sand bars, bridges, portages, shifting currents, or similar obstructions. Thus, a waterway… might have had substantial obstructions which were overcome by frontier boats and/or portages…even though boats had to be removed from the water in some stretches, or logs be brought around an obstruction by means of artificial chutes…" 33 C.F.R. § 329.10
10. "**(a)**Effect on determinations. Although **conclusive determinations of navigability can be made only by federal Courts**,…Official determinations by an agency made in the past can be revised or reversed as necessary to reflect changed rules or interpretations of the law." (Emphasis Supplied) 33 C.F.R. § 329.14

Respectfully submitted,



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[5] See 40 CFR 230.3(s) "The term waters of the United States means: …All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:…From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or… Tributaries of waters identified in paragraphs (s)(1) through (4) of this section;"

[6] See also § 9 & 10 of the Rivers and Harbors Appropriation Act of 1899 33 U.S.C. 401 & 403.

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Jholder2004@Gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of December, 2022, a copy of the foregoing Bench Trial Memorandum was served via the MDEC system to :

PARTIES:

Timothy Maloney, Esq.,
Brandy Peeples, Esq.,
Robert Kline, Esq.,
Justin Holder, *Pro Se.*

Justin K. Holder, *Pro Se*

Justin K. Holder

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E-FILED Washington Circuit Court 1/31/2023 10:29 AM System System
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E-FILED; Washington Circuit Court
Docket: 1/31/2023 10:29 AM; Submission: 1/31/2023 10:29 AM

Defendant(s) is permitted to file post-trial/post judgment motions as permitted by the Md. Rules.

01/31/2023 Andrew F. Wilkinson

January 30th 2023

Justin K. Holder
308 West Chapline Street
Sharpsburg, MD 21782
(240) 356 - 2008

Honorable Andrew F. Wilkinson
Judge - Washington County Circuit Court
24 Summit Ave, Hagerstown, MD 21740
Re: *Benjamin Estes v. Justin Holder, et al.*, Case No. c-21-cv-20-000430; Request fro file Motion

Dear Honorable Andrew Wilkinson,

Pursuant to the Case Management Order entered on Sept. 20, 2021, Defendant Justin Holder requests to file a Motion related to the court's Order of January 30th 2023 issuing a permanent injunction. This Defendant is appreciative and compliments the Court on a well written Order. The Injunction is immediately appealable. The issue related to the King's Charter of 1632 and standing to prosecute or defend a trespass, especially in waters of the state are hot topics and perhaps ripe for immediate certification by the Supreme Court. Thus before requesting review in the Appellate Court of Maryland the Defendant has several narrow items regarding the court's Order that are unclear and/ or contrary to clear Maryland law; as well as the discovery of new evidence.

The Court concluded, citing *Stansbury v. MDR Development, LLC*, 161 Md. App. 594, 606-09 (2005) ("That is, in non-navigable waters, the public has the right to boat, kayak, canoe, and swim, among other things that can be done on or within the water, but the public does not have the right to touch the land beneath the water.") The Appellate Court precisely stated: "(referring to *Browne v. Kennedy,* 5 Har. and J. 195 (1821)): Whatever the law was elsewhere, that case settled it for this state, and has never been overruled or qualified. It was there held that Lord Baltimore, a proprietor of Maryland, ...under the charter granted to him by the king, as the king had prior to granting the charter-subject to the right of the public to use it for fishing and navigation. The right to grant land covered by navigable waters afterwards became vested in the state-subject to the same restrictions." *Id* at p. 620. The Appellate Court of Md concluding "Accordingly, [Estes] is entitled to full enjoyment of her subaqueous land, which includes the superadjacent airspace so long as she does not impede the public's right to '**fishing and navigation.**' *Bowie,* 133 Md. at 7, 104 A. 461 (referring *Browne v. Kennedy,* 5 Har. and J. 195 (1821))." [Emphasis Added] *Id* at p. 621. Thus this Court's order cites to the correct legal authority and acknowledges the publics right to "navigation" but is unclear or contradicts clear Md law as to "fishing."

At trial and in his bench memo Defendant Justin Holder was requesting this Court must determine the Public's rights in accordance with Article IV of the Charter of Maryland, 20 June 1632, by which Charles I granted to Caecilius Calvert, Lord Baltimore subjecting the grant to the reservation contained in Article XVI:

> "...Saving always to US, our heirs and successors, and to all the subjects of our kingdoms of England and Ireland, of US, our heirs and successors, the liberty of fishing for sea-fish, as well in the sea, bays, straits, and navigable rivers, **as in the harbours, bays, and creeks of the province aforesaid**, and ***the privilege of salting and drying fish on the shores of the same province;...***" [Emphasis Added]

Thus the Kings charter vested in the Public the right of "fishing" and "***the privilege of salting and drying fish on the shores.***" Defendant Just Holder's Motion would demonstrate this

Entered: Clerk, Circuit Court for
Washington County, MD
January 31, 2023

court has overturned 200 years of clear Md. law in *Browne v. Kennedy,* extinguishing the rights granted to "US, our heirs and successors, and to all the subjects of our kingdoms of England and Ireland, of US, our heirs and successors." **If this was the court's intent, the court will simply deny this request**, if not Defendant request the Court allow Defendant to be heard.

This court has further found by evidence outside the record "it is clear that Justin Holder and Deena Holder use Uncle Eddie's as an alter-ego to hold the land neighboring Plaintiff's property" but "ha[ve] no standing to assert rights to...the Creek." Md. law is conclusive a licensee can prosecute and Defend a trespass claim *Cf. JBG/Twinbrook Metro Ltd. v. Wheeler,* 697 A.2d 898, 346 Md. 601 (1997). This is particularly germane in the instant case because Plaintiff Estes has sued Justin and Deena Holder for trespass and standing to defend that allegation is determined by the operative complaint. Defendant's Motion will clarify the posture and that without certification under Md. Rule 2-602(b) this opinion is unjustifiable under the due process clause of the constitution. The court has effectively ruled that when sued for trespass the Defendant's can not assert title in a stranger, this is incorrect, *Cf. Porter v. Schaffer*, 126 Md. App. 237, 728 A.2d 755, 772 (1999).

Defendant has discovered new evidence improperly/illegally withheld by Md Dept. of Environment who was issued a Subpoena in the instant case. Specifically a Complaint Mr. Estes attested to at trial. The complaint is in direct contrast to Mr. and Mrs. Estes testimony and impeaches all of the Plaintiff's witness directly related to to the factual evidence the court weighed in issuing the injunction. Defendant has requested a transcript and certified copy of the newly discovered evidence and will include them as exhibits in his motion. Generally:

COMPLAINT

TO: THE MARYLAND DEPARTMENT OF THE ENVIRONMENT (MDE)

REGARDING: THE BOONSBORO-KEEDYSVILLE WATER SYSTEM, generally,
THE KEEDYSVILLE SPRING, specifically.

Date: 01/01/2018

Whereas, there has been considerable visible change in the flow of the Keedysville Spring water outflow through and near the undersigned's land in the absence of formal drought conditions;

Respectfully Submitted.

Benjamin N. Estes
Keedysville, MD resident, affected landowner

Lisa S. Estes
Keedysville, MD resident, affected landowner

Mr. Estes acknowledged the letter but Defendant Justin Holder was unaware that Mrs. Estes also signed the letter. This is material and the integrity of this court's order would be in question without this newly discovered evidence being weighed to judge the credibility of the witnesses.

Justin Holder, *Pro Se*

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES	*	
Plaintiff	*	
v.	*	
	*	CASE NO.: C-21-CV-20-000430
JUSTIN HOLDER, et. al,	*	
Defendant(s)	*	

* *

MOTION TO ALTER OR AMEND JUDGEMENT OF INJUNCTION

COMES NOW Defendant, Justin Holder, in proper person and files this Motion to alter or amend judgement of injunction, in accordance with Md rule(s) 2-311, 2-534 and 2-535, and for reasons states:

PROCEDURAL POSTURE

On January 22, 2020, Plaintiff filed an action for trespass and damages against Justin Holder in the District Court, which Defendant answered putting validity of title at issue.

On November 16th 2020 Plaintiff Estes filed a complaint alleging trespass and other torts against Defendants Justin and Deena Holder, who answered his complaint *inter alia* denying Plaintiff's title. On March 9, 2021, Plaintiff amended his pleadings adding Quiet Title and Ejectment seeking a determination he is the title owner of now "*in rem*" property:

"Being all of Lot 2 ... recorded in Plat folio 9186...(Plat "9186"); and

seeks damages for trespass and other torts by the Defendants.

Defendant Justin Holder's verified March 19th 2023 answer denied title of Plaintiff, unambiguously stating Defendant is in actual possession, Plaintiff's lack of jurisdiction in equity, claiming title by adverse possession and requesting dismissal of Quiet Title.[1]

---

[1] Specifically Justin Holder's amended answer stated: a) defense 1 at ¶26 "Admit Plaintiff had made demands, Deny Defendant acquiesced to any demand; Admit Plaintiff HAS NOT entered lands on the west of the Little Antietam Creek."; b) defense 2 "Plaintiff's claim fails to meet the Statutory requirements of Maryland Real Property Article 14-108. Plaintiff is not in peaceable possession of the property described in said complaint. The property is not "vacant land" as stated. Action at Law and Proceeding and/or Equity is pending in the Maryland District Court of Washington County that validity of title to said land is the center of said Action in Law, Action(s) being the following case numbers: D-112-CR-20-004016[;] D-112-CR-20-004087[;] D-112-CV-20-007201"; c) defense 3 "Plaintiff's Complaint is barred by the Statute of Limitations." e*g.* adverse possession; d) defense 9 "Plaintiff's claims are barred by lack of jurisdiction" in equity; and e) defense 10 "Plaintiff does not hold equitable title to any lands in Keedysville, MD 21756 West of the East Bank of the Little Antietam Creek, lands in which the Plaintiff has alleged counts 1 through 4 occurred."

Defendant Justin Holder immediately noted deposition of surveyor Frederic Frederick[2] (Mr. "Frederick.") On March 24th 2021 Plaintiff filed for a protective order of Mr. Frederick, which was denied. Mr. Frederick's deposition was taken on April 27th 2021. On April 28th 2021 Defendant Justin Holder filed a request for Summary Judgement on Count VI ("MSJ- Ejectment") challenging Plaintiff to adduce some evidence of superior title. On May 6th, 2021 Plaintiff filed "Second Amended Complaint," adding additional parties and verified factual allegations of adverse possession. Plaintiff opposed Defendant Justin Holder's MSJ-Ejectment with an affidavit declaring personal knowledge of predecessor adverse possession.[3] In July of 2021 all named parties in the Second Amended Complaint answered and Defendant Justin Holder made a timely demand for a jury trial.

On August 20th 2021 the district court and circuit court actions were consolidated. On August 29th 2021 Defendant Holder filed a Motion to Dismiss Count V ("MTD - Quiet Title") claiming *inter alia:* a) failure to join parties; b) Defendant is in possession; c) an action at law is pending to enforce or test the validity of the title; and d) adequate remedy of law under RP § 14-108.1 available to Plaintiff. Plaintiff opposed MTD - Quiet Title arguing: a) there is no other action pending to test title; b) dismissal would serve no purpose;[4] and c) requesting the court issue a case management order. By Order dated Feb. 4, 2022,[5] this court

---

[2] Plaintiff's First Amended Complaint at ¶20 alleged: "While FSA acknowledged that its initial plat of the Holder Property contained a minor error in locating the eastern boundary of the Holder Property, it also acknowledged that even if the initial plat of the Holder Property was correct, the shared boundary line would still be on the western side of Little Antietam Creek."

[3] Defendant Justin Holder sent Plaintiff discovery targeting new allegations of adverse possession on May 6th 2021. Plaintiff filed for Protective Order which was granted. It was discovered on December 15th 2022 that Plaintiff lied on this affidavit and the affidavit was merely his argument or contention.

[4] Plaintiff specifically argued at p. 3 of his Opposition to MTD - Quiet Title "Even if Holder was correct and the pendency of [case] One was a bar to the quiet title portion of [case] Two, dismissing Count V on that procedural ground would have no practical effect…Plaintiff would simply amend the complaint from [case] one to include the same Count V that was just dismissed, putting the parties right back in the same place they are now." The record of the consolidated trial is devoid of any amendment to the District Court case One, or request for leave from Plaintiff to amend same.

[5] Defendant notes a review of his MDEC emails did not locate service of said Order. However the court has the authority to sever claims as justice requires. Defendant reserves his rights on Appeal to challenge the court's discretion and legal conclusions in its decision to sever the jury trial.

severed the claims/actions raised in the Second Amended Complaint, setting this matter for bench trial on the issues of Count 5 (Quiet Title) and Count 6 (Ejectment), and scheduling the remaining Counts and district court Case for jury trial, at a time to be later determined.

Prior to trial on Count 5 (Quiet Title) and Count 6 (Ejectment), this court considered a Motion for Summary Judgment filed by Plaintiff. Defendant(s) opposed jointly by reference arguing *inter alia* a genuine dispute of material fact related to the courses and distances boundary location on the ground; and Defendants Justin Holder and Uncle Eddies brokedown palace LLC by reference, renewed demand for summary judgement as to Count VI (the "Second MSJ - EJECTMENT") claiming *inter alia:* a) Plaintiff is not in possession; b) Plaintiff can not meet his burden to show superior title; and c) Plaintiff can not meet his burden to prove adverse possession. After a hearing in which all Defendants participated, this court issued an Opinion and Order dated September 19, 2022 granting summary judgment, as to Count V (Quiet Title), in favor of Plaintiff. The court ordered:

> "That the boundary line between the Plaintiff's lands and the lands of Defendant Uncle Eddie's Brokedown Palace, LLC is as indicated on Plat 10955, one of the Plat Records of Washington County, Maryland," (Plat "10955.")[6]

After a 2 day trial the court issued an Injunction against Defendants enjoining them from touching the bottom of the Little Antietam Creek in Keedysville, Maryland. Defendant Justin Holder wrote a letter on Jan. 30th 2023 in accordance with case management order requesting to file Motions on 3 issues. On Jan. 31st 2023 this court ordered: "Defendant(s) is permitted to file post-triaI/post judgment motions as permitted by the Md. Rules." Defendant requested stipulation to narrow issues, Plaintiff did not.

I. NON-EXISTENT EVIDENCE OUTSIDE THE RECORD IN ADVERSE DECISION

Defendant firmly denies that: "From information received in a previous proceeding, it is clear that Justin Holder and Deena Holder use Uncle Eddie's as an alter-ego to hold the land neighboring Plaintiff's property" because no such legal basis or "information" exists in relation to the "close corporation." If the Court has so ruled, Defendant objects.

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[6] A significant victory for Uncle Eddies brokedown palace LLC on the southern 2 title lines in deed Liber 6070 folio 197 referencing Plat 10955 as being *usque ad filum aquae* vs. Plat 9186 being on land.

II.STANDING TO DEFEND INJUNCTION TO TRESPASS

A. Jurisdiction and due process when sued

The court discussed jurisdiction in law, equity and in general in *Moore v. McAllister*, 216 Md. 497, 506-8, 141 A.2d 176 (1958):

> "Whether the chancellor had a right to raise the lack of jurisdiction requires a limited inquiry into the meaning of that equivocal word 'jurisdiction'. Juridically, jurisdiction refers to two quite distinct concepts: (i) the ***power*** of a court to render a valid decree, and (ii) the ***propriety*** of granting the relief sought. 1 *Pomeroy, Equity Jurisprudence* (5th ed. 1941), Secs. 129-31. ***To ascertain whether a court has power, it is necessary to consult the Constitution of the State and the applicable statutes.*** These usually concern two aspects: (a) jurisdiction over the person — obtained by proper service of process — and (b) jurisdiction over the subject matter — the cause of action and the relief sought. As was said in the *Shryock* case, *supra,* at p. 76, 'it is a settled rule, that, the Court of chancery being a Superior Court of general jurisdiction, nothing shall be intended to be out of its jurisdiction which is not shown to be so.'
>
> However, jurisdiction over the person and the subject matter goes to the very basic *power* of the equity court. ***If jurisdiction is lacking in this sense, a decree rendered by the court would be void.*** This is so because in such cases there are no circumstances whatever which could give the court jurisdiction. *Shryock v. Morris, supra,* at p. 77. Stated otherwise, there is a fundamental lack of jurisdiction over the parties or the subject matter, or both. *Bogley v. Barber,* 194 Md. 632, 641, 72 A.2d 17 (1950). ***Under such circumstances, before a decree is even rendered, there is no doubt that the court may — indeed it should — dismiss the action on its own motion.*** Furthermore, where the court lacks power to decide a case, such fundamental jurisdiction cannot be conferred by waiver or consent of the parties. See Rule 885, *supra.* For instance, the parties to an automobile accident could not confer jurisdiction by consent on a court of equity." (***Emphasis Added***)

(iii)Standard of review - Defending trespass/injunction as invitee

Although the Posted Trespass statute does not specifically so state, courts and prosecutors alike have properly assumed that permission and claim of right are valid defenses. *See Jones v. State*, 194 Md. App. 110 (2010) ("The trespass on posted property statute does not preclude at trial the defenses of ownership, right, or permission."). The second flavor of Trespass is Wanton Trespass on Private Property under *CL* § 6-403, which provides, in pertinent part: "A person may not enter or cross over private property ... after having been

notified by the owner or the owner's agent not to do so, unless entering or crossing under a good faith claim of right or ownership." Subsection (d) provides that "[t]his section prohibits only wanton entry on private property." The Court of Special Appeals addressed the concepts of wanton entry and good faith claim of right in *In re Jason Allen D.* 127 Md. App. 456 (1999). There, the Court explained:

> Appellant's second and third arguments, largely rooted in Art. 27, § 577(a)(3) [7], are essentially two sides of the same coin. Section 577(a)(3) excludes from the statute's purview those situations when a person enters on property of another "under a *bona fide* claim of right ....", and makes clear that conduct amounts to trespass only if it is "wanton." Thus, the concept of "wanton" appears inextricably linked to the question of whether the accused trespasser had a "*bona fide* claim of right" with respect to the property at issue. Stated otherwise, it would seem that a trespass cannot be "wanton" if the alleged trespasser had a "*bona fide* claim of right" to enter onto the property."
>
> *Cf. JBG/Twinbrook Metro Ltd. v. Wheeler*, 346 Md. 601, 697 A.2d 898, 899 (1997):
>
> ("The issues concern... a claim of trespass *quare clausum fregit,* and the sufficiency of the plaintiff's evidence to establish liability for trespass on the part of two oil companies [invitees] which at different times sold gasoline to the service station owner and operator.")
>
> "Each party purports to find support for its position in *Rockland Bleach & Dye Works Co. v. H.J. Williams Corp.,* 242 Md. 375, 219 A.2d 48 (1966), a Maryland common law trespass case. There, in order to support a section of a highway, the defendant, a contractor working for the State Roads Commission, had created a fill 50 feet high and 390 feet wide at the base. *Id.* at 379, 219 A.2d at 49... The defendant argued, *inter alia,* that it had insufficient control because it was obliged to follow the drainage plan designed by the State Roads Commission...This Court said that 'when an adjacent property is invaded by an inanimate or intangible object it is obvious that the defendant must have some connection with or some control over that object in order for an action in trespass to be successful against him." *Id.* at 387, 219 '.2d at 54" *Id* at p. 909.

Defendant Justin Holder has only ever asserted public rights in gross, in this litigation. However an invitee may defend an injunction to prevent trespass with a valid claim of title, or appurtenant rights over the servient land of Plaintiff, as owner's guest.

---

[7] Article 27, § 577(a)(3) is the predecessor to present day *CL* § 6-403.

(i) Standard of review - Defending trespass/injunction as licensee

"A licensee is a person 'who enters the property with the knowledge and consent of the owner but for his own purposes or interest,' and, as to him, the owner owes no duty 'except to abstain from willful or wanton misconduct or entrapment.' *Id.,* 242." *Murray v. Lane*, 51 Md. App. 597, 600, 444 A.2d 1069 (1982).

> "It is important, in the first instance, to note that appellant's 'status' as invitee, licensee, or trespasser does not necessarily depend upon any direct relationship with appellees. Her invitation to use the stairway and platform came from appellees' tenant, Holtz; and, if appellant was an invitee or licensee of Holtz, she is to be regarded as the invitee of appellees as well, even if they were unaware of her presence. The law in that regard is well stated in Restatement of Torts 2d, § 360 (1965), which the Court of Appeals adopted in *Sezzin v. Stark,* 187 Md. 241 (1946); *see also Ross v. Belzer,* 199 Md. 187 (1952)...*See also Landay v. Cohn*, 220 Md. 24, 27 (1959):
>
> > "Where a landlord leases separate portions of a property to different tenants and reserves under his control halls, stairways or other parts of the property for use in common by all the tenants, he must use ordinary care and diligence to maintain the retained parts in reasonably safe condition.... The duty stems from the responsibility engendered in the landlord by his having extended an invitation, express or implied, to use the portions of the property retained by him.... *Such an invitation extended to a tenant includes the members of his family, his guests, his invitees and others on the land in the right of the tenant.*" (Citations omitted; emphasis supplied.);

and *Macke Laundry Service Co. of Maryland v. Weber, supra*, 267 Md. 426 at 429-30." *Id* at p. 601-2. The duty owed to the licensee by the landowner is that of a trespasser *see* ***Bramble v. Thompson, 287 A.2d 265, 264 Md. 518 (1972):***

> "A licensee is one privileged by virtue of proper consent to enter for his own purpose or convenience onto another's property. There are two types of licensees, a bare licensee and a licensee by invitation. A bare licensee takes the property as he finds it and, like a trespasser, he is owed no duty by the owner except that he may not be willfully or wantonly injured or entrapped by the owner once his presence is known." (Citations omitted)

Plaintiff and the court acknowledge the public rights over lands claimed by the Plaintiff that Defendant has enjoyed, but now restricts those rights with its injunction. Defendant has standing to defend injunction because as a bare licensee he enjoys the same priveledge as owner. Defendant has never conceded Uncle Eddies brokedown palace LLC's appurtenant rights and Plaintiff failed to bring forth evidence terminating them.

(ii) Argument - Defendant has standing and the injunction will not lie

The courts Jan. 30th 2023 order recognized in all of Justin Holder's alleged trespass he relied on rights of the public: "Individually, Justin Holder has no standing to assert claims of reserved rights. Uncle Eddie's and Deena Holder did not assert any rights at trial and, therefore, no rights will be conferred." Defendant Justin Holder has standing to defend the injunction from trespass as invitee or licensee of the record owners, even though he did not rely on those rights previously. Alternatively, if rights were lost by *estoppel* there was no trespass prior to *estoppel* accruing.[8] Thus the rights appurtenant to the record owners must be adjudicated prior to determination of a trespass in a future trial.

(iii) Argument - Plaintiff's reason for injunction has no merit

In relation to the appurtenant rights of Uncle Eddies brokedown palace LLC, Defendant relies on his bare license. Plaintiff and wife both stated at trial they wanted an injunction because they feared the defendant may sue them if their dogs attacked him while enjoying the creek. Plaintiff has a duty by law not to allow his animal to be "at large" in a public place, which Court, Plaintiff and wife acknowledge the creeks are indeed public. The user of a bare license is owed no more duty than a trespasser. The injunction would be irrelevant to Plaintiff's liability in private, and Plaintiff can still not allow his dogs to be "at large" in a public place, for they could flip a boat and cause contact with land. Defendant

[8] The courts Sept. 19th 2022 and Jan. 30th 2023 orders leave many facts to fully and fairly litigate.

made clear at trial and the court acknowledged that Defendant said he would not trespass if he had no right of the public or license to be there. There is no future harm to give this court cause to issue injunction against the Defendants. Plaintiff's request has no merit.

II. ALTERNATIVELY IF PLAINTIFF DISMISSES THE TRESPASS, NUISANCE AND EJECTMENT SUIT THIS COURT SHOULD AMEND ITS INJUNCTION ORDER

A. Equity of the Injunction

(i) Standard of review - Clean hands

Is discussed in *Dickerson v. Longoria*, 995 A.2d 721, 414 Md. 419 (2010):

"The maxim 'he who comes into equity must come with clean hands' is 'a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant.'" *Mona v. MONA ELECTRIC*, 176 Md. App. 672, 934 A.2d 450 (2007) citing *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.,* 324 U.S. 806, 814, 65 S.Ct. 993, 89 L.Ed. 1381 (1945). "We explained this equitable doctrine in *Wells Fargo v. Neal*: 'The [un]clean hands doctrine states that "courts of equity will not lend their aid to anyone seeking their active interposition, who has been guilty of fraudulent, illegal, or inequitable conduct in the matter with relation to which he seeks assistance." *Hlista [v. Altevogt],* 239 Md. [43,] 48, 210 A.2d [153,] 156 [(1965)]; *see also Hicks v. Gilbert,* 135 Md.App. 394, 400, 762 A.2d 986, 989-90 (2000)."

(ii) Standard of review - Comparative hardship

Is discussed in *Colandrea v. Wilde Lake*, 761 A.2d 899, 361 Md. 371 (2000) at p. 912:

"He invokes the equitable doctrine of comparative hardship to avoid this result. That doctrine has been explained with forceful clarity by Chief Judge Hammond for the Court in *Dundalk Holding Co. v. Easter,* 215 Md. 549, 555-57, 137 A.2d 667, [670-71,] *cert. denied,* 358 U.S. 821, [79 S.Ct. 34, 3 L.Ed.2d 62,] rehearing denied, 358 U.S. 901[, 79 S.Ct. 219, 3 L.Ed.2d 151] (1958), which was recently reaffirmed in *Grant v. Katson,* 261 Md. 112, 274 A.2d 88 (1971). It basically provides that a court may decline to issue an injunction where the hardship and inconvenience which would result from the injunction is greatly disproportionate to the harm to be remedied. Innocent mistake on the part of the party to be enjoined is a factor to be considered in applying the doctrine."

(iii) Standard of review - Nuisance and the purpresture

"Lord Coke defined the term 'purpresture' as a close or enclosure, that is, when one encroaches or makes that several to himself which ought to be common to many. 2 *Story, Equity Jurisprudence,* 14th Ed., sec. 1248." *Adams v. Commissioners of Trappe*, 204 Md. 165, 170, 102 A.2d 830, (1954).

(iv) Argument - Estes should be left with his remedy in law

Plaintiff has lied, cheated and stole in order to obtain an order granting him title by *estoppel* to the swamp he covets. In the case of *Schaeffer v. Sterling,* 176 Md. 553, 6 A.2d 254 (1939), the Court stated that when applying the clean hands doctrine an equity court "will leave [the complainant] to whatever remedies he may have *at law*." *Id.* at 555, 6 A.2d at 255.

(v) Argument - The injunction served to chill the rights of the public so Plaintiff Estes could violate the law in a public place, a purpresture

The court has acknowledge the public's right to boat, kayak, canoe and swim in the Little Antietam Creek. Plaintiff and wife testified they enjoyed walking the dogs by the creek daily, unleashed. Plaintiff and wife testified the dogs could be dangerous and they were concerned the dogs would attack and injure the Defendants and children. Thus Plaintiff and wife can not allow the animal to be "at large" in public. Their dogs will enter the public waterway and upset the watercraft causing persons to touch land. The injunction serves to chill the rights of the public to use even the pools through fear of vexatious lawsuits, criminal charges and now contempt! The court's injunction fails to balance the rights of the public to boat, kayak, canoe and swim and succeeds in furthering Plaintiff's purpresture.

Alternatively the court must enjoin Plaintiff from allowing animals "at large" in the public waterway or the public's rights in the pools are not chilled by his injunction.

III. THE LANDMARK RULING OF FIRST IMPRESSION EXTINGUISHING THE *"PRIVILEGE OF SALTING AND DRYING FISH ON THE SHORES."*

A. This Defendant Objects to the Trial court's restatement of his position

The *January 30th 2023 Opinion of the trial court* at p. 6 incorrectly states "Justin Holder argue that no injunction should be issued in relation to the use of the Creek because the waters of the Creek at this location are *navigable*." The record of the case reflects:
"Your Honor, I just disagree with both of the relevance of navigability to any of this because the King's Charter in the Public Trust Doctrine applied to the creeks and rivers of the State." Justin Holder was unambiguous, navigability has no impact on the Public's rights in accordance with *Article IV of the Charter of Maryland*, 20 June 1632, by which Charles I granted to Caecilius Calvert, Lord Baltimore subjecting the grant to the reservation contained in *Article XVI*:

> "...Saving always to US, our heirs and successors, and to all the subjects of our kingdoms of England and Ireland, of US, our heirs and successors, the liberty of fishing for sea-fish, as well in the sea, bays, straits, and navigable rivers, **as in the harbours, bays, and creeks of the province aforesaid**, and *the privilege of salting and drying fish on the shores of the same province;...*"
> [Emphasis Added]

Justin Holder made it crystal clear his position was that the Plaintiff produced no evidence the Public has abandoned, extinguished or terminated its right of "fishing" and "*the privilege of salting and drying fish on the shores of the same province;*" and in order to grant the injunction the trial court must overturn 200 years of common-law never disturbed in *Browne v. Kennedy, 5 Har. and J. 195 (1821).*[9] Exactly what this court has inexplicably done.

B.This trial courts January 30th 2023 Opinion citing *Stansbury v. MDR Development, LLC*, 161 Md. App. 594, 606-09 (2005)

[9] The trial court previously overturned 100 years of common law in *Bowie v. Western Maryland Railroad Terminal Co*., 133 Md. 1, 7, 104 A. 461 (1918) with its Sept 19th 2022 ruling on the boundary.

Compare January 30th 2023 Opinion of the trial court at p. 6:

"If the waters are non-navigable. then the public (Defendants included) have more limited rights to the use of the water. *Id*. They have the right to be on top of the water and to be within the water, but they do not have the right to walk or stand on the land under the water. *Id*. That is, in non-navigable waters, the public has the right to boat, kayak, canoe, and swim, among other things that can be done on or within the water, but the public does not have the right to touch the land beneath the water. *Id*."; *with*

Stansbury v. MDR Development, LLC, 161 Md. App. 594, 607 (2005):

"As the Court of Appeals explained in *Bowie v. Western Maryland Railroad Terminal Co*., 133 Md. 1, 7, 104 A. 461 (1918) (referring to *Browne v. Kennedy*, 5 Har. and J. 195 (1821)):

> Whatever the law was elsewhere, that case settled it for this state, and has never been overruled or qualified. It was there held that Lord Baltimore, a proprietor of Maryland, acquired the same right to dispose of land covered by navigable waters within the province, under the charter granted to him by the king, as the king had prior to granting the charter-subject to the right of the public to use it for fishing and navigation. The right to grant land covered by navigable waters afterwards became vested in the state-subject to the same restrictions."

The Appellate court of Maryland concluding : "Accordingly, Ms. Stansbury is entitled to full enjoyment of her subaqueous land, which includes the superadjacent airspace so long as she does not impede the public's right to 'fishing and navigation.' *Bowie*, 133 Md. at 7, 104 A. 461 (referring *Browne v. Kennedy,* 5 Har. and J. 195 (1821))." *Id* at page 609.

C. <u>Legal standard - Chapter 129 of the Acts of 1862 did not modify the rights of the public for "navigation and fishing" in navigable or non-navigable waters</u>

The most recent 160 years of caselaw this court referred to at trial had to do with ownership of the land under water. Defendant Justin Holder made clear the ownership of the land was irrelevant to injunction because *Chap. 129 of the Acts of 1862* at §§ 45 & 48 guaranteed the owners of lands on navigable water the same rights as those on non-navigable waters. *See Wagner v. City of Baltimore*, 210 Md. 615, 620-22, 124 A.2d 815 (1956):

"The statute which is controlling as to the principal controversy in the present case is Chapter 129 of the Acts of 1862, the three sections thereby enacted now being codified as Sections 45, 46 and 48 of Article 54 of the Code (1951). (The only amendment to any of these sections was made by Chapter 47 of the Acts of 1955 to correct an error in the numbers of the two earlier sections referred to in Section 48, which apparently occurred as the result of the insertion of what is now Section 47.[10]) This statute has been before this Court in a number of cases. In the present case a great deal of argument has been directed to the meaning of "navigable waters" — whether the term should be construed as including all waters subject to the ebb and flow of the tide or only such waters as are navigable in fact. For reasons which we shall state below, we do not consider this particular question as necessarily determinative of the case.

The statute itself, as originally enacted (Acts of 1862, Chapter 129) reads as follows, the numbers of the Sections in the 1951 Code being inserted in brackets after the numbers of the corresponding Sections of the Code of 1860, to which these Sections were added:

> 'Whereas, Doubts are entertained in regard to the extent of the rights of proprietors of land bounding on navigable waters, to accretions to said land, and to extend improvements into said waters; for the purpose of solving such doubts, therefore,
> 'Section 1. *Be it enacted by the General Assembly of Maryland,* That article fifty-four of the Code of Public General Laws, be amended by adding thereto the following sections, to wit:
>
> '"`Thirty-seven [45].'" The proprietor of land bounding on any of the navigable waters of this State, is hereby declared to be entitled to all accretions to said land by the recession of said water, whether heretofore or hereafter formed or made by natural causes or otherwise, in like manner and to like extent as such right may or can be claimed by the proprietor of land bounding on water not navigable.
>
> '"`Thirty-eight [46].'" The proprietor of land bounding on any of the navigable waters of this State, is hereby declared to be entitled to the exclusive right of making improvements into the waters in front of his said land; such improvements, and other accretions as above provided for, shall pass to the successive owners of the land to which they are attached, as incident to their respective estates. But no such improvement

---

[10] "Sections 45, 46 and 47 of Article 54 (three pertinent sections of the Act of 1862) together with Section 485 of Article 27 were repealed by the General Assembly by the 1970 Wetlands Act which became effective on July 1, 1970." *Bd. of Pub. Works v. Larmar Corp.*, 262 Md. 24, 32, 277 A.2d 427 (1971).

> shall be so made as to interfere with the navigation of the stream of water into which the said improvement is made.
>
> "'`Thirty-nine [48].'" No patent hereafter issued out of the Land Office shall impair or affect the rights of riparian proprietors, as explained and declared in the two sections next preceding this section, and no patent shall hereafter issue for land covered by navigable waters.'"

Prior to the Act of 1862 it had been held that the Lord Proprietary became vested under the Charter of Maryland with title to the soil under navigable waters, that he could convey title thereto and that the State succeeded to these rights. *Browne v. Kennedy,* 5 Harris & J. 195. Since then this doctrine has been repeatedly recognized or reaffirmed, as in *Day v. Day,* 22 Md. 530; *Hess v. Muir,* 65 Md. 586, 5 A. 540, 6 A. 673; *Goodsell v. Lawson,* 42 Md. 348; *Sollers v. Sollers,* 77 Md. 148, 26 A. 188; *Cahill v. Baltimore,* 173 Md. 450, 196 A. 305. As was pointed out by Judge Markell in *Mayor & City Council of Baltimore v. Canton Co.,* 186 Md. 618, 630-631, 47 A.2d 775, 781, "For over 200 years, until 1862, the State (and the proprietor or the colony) patented to individuals, subject to the public rights of navigation and fishery, fee-simple title to land under water."

Since the passage of Chapter 129 of the Acts of 1862 that can no longer be done, as the case just cited indicates and has been held in other cases, including *Day v. Day, supra; Sollers v. Sollers, supra;* and *Linthicum v. Shipley,* 140 Md. 96, 116 A. 871."

(iv) Argument - Plaintiff produced no evidence at trial the public had abandoned, terminated or extinguished its rights to the shore

Defendant challenged the Plaintiff at trial in pleadings and argument to produce some evidence the rights of the public or Uncle Eddies brokedown palace LLC have been terminated, abandoned or otherwise extinguished. Plaintiff did not even attempt to produce evidence. It was held in *Osztreicher v. Juanteguy*, 338 Md. 528, 659 A.2d 1278 (1995) that:

> "Acquiescence implies consent, although by no means express consent. *See* Black's Law Dictionary 22 (5th ed. 1979) (defining "acquiesce" as "[t]o give an implied consent to a transaction, to the accrual of a right, or to any act, by one's mere silence, or without express assent or acknowledgement") (citations omitted)...A party who does not offer evidence on an issue as to which that party has the burden of proof acquiesces in the adverse judgment entered on that issue. *Bell v. Bell,* 248 S.W.2d 978, 992 (Tx.Ct.App. 1952). *See Considine v. Considine,* 726 S.W.2d 253, 254 (Tex. Ct. App. 1987); *see also Hense v.*

> *G.D. Searle & Co.,* 452 N.W.2d 440, 444-45 (Iowa 1990) (a party inviting a final judgment waives right to appeal); *Frankfurt v. Bunn,* 408 P.2d 785, 787-88 (Okla. 1965) (failure to controvert or contradict evidence is acquiescence in that evidence)."

Thus Plaintiff is precluded from challenging any rights of the public or appurtenant to Uncle Eddies brokedown palace LLC this court determines to be valid. The Court must adjudicate the rights reserved to the heir and assigns of Gordons Purchase by Jacob Hess.

CONCLUSION

Defendant Justin Holder's February 5th 2023 *Motion for new trial* and *Motion to Revise/ Dismiss in accordance with MD. Real Property Code Ann. § 14-108(a)* incorporated as if fully stated herein by reference. The Plaintiff through fraud, deception and despicable behavior has obtained an injunction in equity that is subject to immediate appeal. The court can not lawfully certify its decision in accordance with RP § 108(a), unless Plaintiff dismisses the severed claim/action testing the validity of title. Plaintiff can not argue otherwise.

The court misrepresented Defendant's position. Defendant relies on the right of "navigation and fishing" and "the priveledge to salting and drying the fish on the shores." The court issued a landmark opinion on issues of first impression overturning centuries of law. This King's Charter of 1632 was unambiguous as to the rights reserved to the public. It was not until 1862 the state took title to the bed under navigable water, giving the riparian owners on navigable water the same rights as those on non-navigable water. The Defendant would like the court to clarify what the King meant by "fishing" and "salting and drying fish on the shores;" if one can not touch the creek bottom and banks in doing so.

Defendant has standing to request the court redress the boundary decision and injunction in accord with the common law policy *ad medium filum aquae sub publicum* relating to the southern 2 lines on Plat 10955. Defendant also has standing to request the court redress and adjudicate the appurtenant rights reserved in the 1770 Hess deed.

Defendant request redress on the equitable principles in issuing injunction. As bare licensee or trespasser, Plaintiff has no liability for dog attacks. In the Public waterway dog attacks that will upset Defendant's watercraft must be enjoined, Plaintiff can not allow the

dogs “at large.” There is no factual basis to find a future harm to Plaintiff because Defendant will obey the law in terms of the courts decision.

Plaintiff has filed false affidavits and that behavior is directly related to the matter in which he seeks assistance in equity. The result of the injunction is that the public rights to kayak, boat, fish, swim and salt fish on the shore has been chilled is unreasonable in relation to the benefits to Plaintiff. This court has no good cause to issue preliminary injunction, let alone a final permanent injunction, prior to final judgement on the entirety of the claims at issue.

Respectfully submitted,

Justin K. Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, Maryland 21782
(240) 356-2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of February 2023, a copy of the foregoing Motion to alter or amend judgement of injunction was served via the MDEC system to :

Timothy Maloney, Esq.,
Brandy Peeples, Esq.,
Robert Kline, Esq.,
Justin Holder, *Pro Se;*

Justin K. Holder, *Pro Se*

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES	*	
Plaintiff	*	
v.	*	
	*	CASE NO.: C-21-CV-20-000430
JUSTIN HOLDER, et. al,	*	
Defendant(s)	*	

* *

MOTION TO REVISE/DISMISS IN ACCORDANCE WITH MD. REAL PROPERTY CODE ANN. § 14-108(a)

COMES NOW Defendant, Justin Kyle Holder, in proper person and files this Motion to Revise/Dismiss in accordance with MD. Real Property Code Ann. § 14-108(a), Md rule(s) 2-311, 2-534 and 2-535, and for reasons states:

PROCEDURAL POSTURE

Defendant Justin Holder incorporates the section titled "PROCEDURAL POSTURE" from his February 5th 2023 Motion to alter or amend judgement of injunction by reference.

I. FINAL JUDGEMENT - PLAINTIFF'S FINAL ULTIMATUM

A. The court must dismiss and/or can not lawfully certify Count V under Md. Rule 2-602(b), unless Plaintiff dismisses the severed claim/action

(i) Legal standard/remedy - Action at law in Ejectment

Defendant refers this court to canons of ejectment law, as articulated in *Joseph v. Bonaparte,* 118 Md. 591, 593-94, 85 A. 962 (1912). There, the Court said:

> "Unless the plaintiff in ejectment shows a legal title and a right to possession, not barred by the statute of limitations, he cannot recover in ejectment under the settled law of this state, no matter what may be the rule in other jurisdictions. In 1 Poe, Pl. & Prac. (4 th Ed.) § 260 it is said: Three leading rules are enforced in the trial of ejectment causes: *First, the plaintiff cannot recover upon simply proving that his title is stronger or less defective than that of the defendant;* nor is it enough for him to show that the defendant had no title whatever, or not so good a one as his own, for the decision of the case does

> not turn upon any such comparison. He must recover, if at all, upon the strength of his own title, and not by reason of the weakness of that of the defendant, and therefore the defendant may always defeat the action by proof of a clear subsisting title in a stranger. This has always been an established principle of ejectment law in Maryland." (Emphasis added)

(ii) Legal standard/remedy - Action at law in Trespass *QCF* to try title

Plaintiff Opposed the MTD - Quiet title relying in part on *Wilt v. Wilt*, 242 Md. 129,130, 218 A.2d 180 (1966) with the following statement of the case:

> "In this action for trespass to real property and ancillary injunctive relief brought by Myrl Wilt and his wife (Myrl) against Marshall Wilt (Marshall) to settle the dispute as to the location of the boundary line between their respective properties, the lower court found that Myrl had obtained title to the disputed strip of land by adverse possession and Marshall appealed."

Defendant replied to the Opposition incorporated herein for reference citing *Stottlemyer v. Kline*, 255 Md. 635, 636, 259 A.2d 52, (1969)[1] stating the case as:

> "This appeal presents us with the question of whether or not the Circuit Court for Washington County (Naughton, J.) was in error in deciding, in an action of trespass *quare clausum fregit,* that Melvin L. Draper and Abbie Jean Draper, his wife, the grantors of the appellee Eugene B. Kline, the plaintiff below, had title to an eight and one-half acre tract of land on the northerly and westerly side of Antietam Creek in Washington County."

The court below in *Rosencrantz v. Shields, Inc.*, 28 Md. App. 379, 382-3, 346 A.2d 237 (1975) describes the legal nature of trespass to try title laid out by John Prentiss Poe:

> "'This matter was the subject of a prior action at law brought by them [Mr. and Mrs. Rosencrantz] against the defendant [Shields, Inc.] on October 1, 1971, making a similar claim of title by adverse possession and alleging that the defendant broke and entered their property and was thus a trespasser.

---

[1] To the extent there was previously a "mill dam" called for in predecessor title deeds the court has discussed and it is "As was well stated in Vol. III, *American Law of Property* § 15.29, p. 862:

> 'A recession of water corresponding to a natural reliction may occur from drainage due to an avulsion or to artificial means. In either event the title to the bed will continue in the party who previously owned it.'

See State v. Longyear Holding Co., 227 Minn. 255, 35 N.W.2d 291 (1948) and the note on this case in 32 Minn. L. Rev. 484 (1948). *See also* the annotation 'Water: rights in respect of changes by accretion or reliction due to artificial conditions,' 134 A.L.R. 467." *Stottlemyer v. Kline*, 255 Md. 635, 649 (1969).

Judgment in this case went against the plaintiffs and the decision of this Court was on November 1, 1974 affirmed by the Court of Special Appeals.

* * *

The preceding law action was one of trespass to try title in which the plaintiff predicated his right of action upon a claim that the defendant illegally broke and entered his property. Thus, the plaintiffs have admitted an entry by the defendant and this entry, if the defendant is the true owner, was sufficient to interrupt the adverse claim of the plaintiffs and to end the previous adverse possession. Defendant's title has now been established in the previous litigation, its entry was thus legal, and this terminated the continuity of plaintiffs' previous possession. See M.L.E., *Adverse Possession,* Sec. 54. The entire premise upon which the previous suit at law was tried, was the physical interruption and interference with the plaintiffs' possession.

The nature of trespass to try title is set forth in Poe, Pleading (4th Ed.), para. 245, where it is stated at pages 224 and 225,

> `Sixth. Where the plaintiff claiming to have the paper title to the land, and by virtue thereof, claiming to be in possession, *or claiming title by adversary possession,* seeks to recover for a trespass alleged to have been committed by the defendant, who himself also claims title and possession under color and claim thereof, and who justifies his alleged trespass accordingly. Here the controversy will be determined in favor of the party who is found to have the title; the possession in such case being dependent upon it' (Emphasis supplied).

Under this rule it appears that the entry of the defendant upon the property was sufficient to break the continuity of plaintiffs' possession and is thus conclusive of the plaintiffs' claim in this case.'"

(iii) Legal Standard - Right to a jury trial will be inviolably preserved in an action at law to decide title to real property

The proper jurisdiction is law and Defendants have a constitutional right to a jury trial. *See Martin v. Howard County*, 349 Md. 469 709 A.2d 125, 131-135 (1998):

> "An action by or on behalf of a landlord to evict a tenant, on the ground that the tenant no longer is entitled to possession, and to restore possession to the landlord, "`is historically an action at law to which the right to a jury trial has always attached in this State.'" (Citations Omitted). It is a form of the traditional legal action of ejectment. 1 John Prentiss Poe, *Pleading and Practice in Courts of Common Law,* § 272 (Tiffany ed. 1925); 1 Herbert Thorndike Tiffany, *The Law of Real Property,* § 180 (1939). *See, e.g.,* (Citations Omitted) Since ejectment, as well as trespass out of which the action of

> ejectment grew, are actions at law, the constitutional right to a jury trial attaches. *McCoy v. Johnson,* 70 Md. 490, 492-493, 17 A. 387, 387 (1889).
>
> With respect to actions involving interests in real property or the right to possession of real property, the well-established differences between actions at law and equitable actions have been set forth in a myriad of this Court's opinions. As a general rule, where there are substantial disputes over interests in land or the right to be in possession of a parcel of land, 'the proper jurisdiction is at law.' (Citations Omitted) An equitable action, by a party not in possession, to decide a disputed title or right to possession, ordinarily will not lie. *Livingston v. Hall,* 73 Md. 386, 395, 21 A. 49, 50-51 (1891)."

The Md. Authority on preservation of a jury trial has been stated 3 years after the merger of law and equity succinctly in *Higgins v. Barnes*, 310 Md. 532, 551, 530 A.2d 724(1987):

> "To compel a defendant to raise his legal counterclaim in an equitable action, while at the same time finding he has waived his right to jury trial on the legal claim, may unconstitutionally deprive him of a jury trial. We hold that a trial court may not deny a defendant his right to a jury trial on the legal issues presented by his counterclaim simply because that counterclaim is raised in an equitable action. We are constitutionally required to 'inviolably preserve' the right of trial by jury in actions at law, and so 'where both legal and equitable issues are presented in a single case, '"only under most imperative circumstances ... can the right to a jury trial of legal issues be lost through prior determination of equitable claims."' *Dairy Queen v. Wood, supra,* 369 U.S. at 472-73, 82 S.Ct. at 897 (quoting *Beacon Theatres, supra,* 359 U.S. at 510-11, 79 S.Ct. at 957)."

(iv) Legal Standard - Plaintiff Estes is not in possession and has adequate remedy in law

"Equity entertains jurisdiction where, although the complainant fears vexatious litigation due to a cloud on his title, he nevertheless cannot sue in ejectment because he is already in possession. The ground of equity jurisdiction in such a case is that being in possession he is denied a remedy at law." *Glorius v. Watkins*, 203 Md. 546, 549, 102 A.2d 274, (1954). *Affirmed Martin v. Howard County*, 349 Md. 469 709 A.2d 125, 131-135 (1998):

> "For example, the General Assembly in Ch. 478 of the Acts of 1888 authorized an equitable action by 'any person entitled to any legal character, or to any right as to any property' against 'any person denying ... his title to such legal character or right,' with the court empowered to 'make therein a declaration that he is so entitled without any further or other relief being asked or given.' In *McCoy v. Johnson, supra,* 70 Md. 490, 17 A. 387, the plaintiff filed a bill in the

> Circuit Court of Baltimore City (an equity court), against the persons holding 'paper title' to a strip of land, for a decree declaring that the plaintiff had acquired title to the strip of land by adverse possession. The Circuit Court dismissed the bill, and this Court affirmed, holding that the plaintiff must have `"clear, legal, and equitable title,"' coupled with possession, to bring an equitable action. 70 Md. at 492, 17 A. at 387. With regard to the plaintiff's reliance on Ch. 478 of the Acts of 1888, this Court acknowledged that the 'very broad' language of the statute appeared to authorize the action, but the Court held (70 Md. at 492-493, 17 A. at 387):
>
> > '[I]t is clear the Legislature has no power to confer on Courts of equity the jurisdiction to determine legal rights, in regard to which Courts of law exercise exclusive jurisdiction. In such cases the Constitution guarantees to suitors the right of trial by jury, and this right the Legislature cannot abridge or take away. The Act of 1888, was borrowed, we find, word for word from the Code of the Indian Empire, but the British Parliament is not controlled, nor is its power limited, as is the power of the Legislature in this State, by a written Constitution. The jurisdiction then conferred by the Act of 1888, can only be exercised in regard to such matters as are properly cognizable by a Court of equity....'
>
> Although we have largely abolished the procedural differences between actions at law and actions in equity, the essential holding in *McCoy v. Johnson,* quoted above, remains viable. It is fully applicable to the relationship between causes of action created by the Legislature and the constitutional right to a jury trial."

(v) Argument - Plaintiff's may not maintain suit in Count V (Quiet Title) while Count(s) I, VI and the district court case (the "actions at law") are pending to test the validity of title in a trial by jury

Plaintiff has initially brought suit as a claim/action at law in trespass. Defendant denied Plaintiff's title and claimed to be in possession of the property west of the Little Antietam Creek. Plaintiff amended his pleadings and requested Quiet Title in equity (and Ejectment which is born in trespass) and Defendant denied his jurisdiction in equity as not being in possession and having adequate remedy at law. Plaintiff argued the claims/actions were all consolidated and therefore no separate action to test the validity of title existed. Defendants never conceded Plaintiff had equity jurisdiction because he does not.

This court severed the claims/actions and again a separate claim/action to test the validity of title does exist. By the clear letter of the law in MD. Real Property Code Ann. § 14-108(a) this court has no subject matter jurisdiction regarding declarations in equity. Disputed facts must be determined with a jury at law. Defendants constitutional right to a jury trial can not be prejudiced in any way shape or form. This court has refused to certify final judgement and the record reflects a genuine dispute of fact exist. Any orders entered by a court that lacks jurisdiction are a nullity and void *ab initio.* Resolution of Count V can do no substantial justice and is a waste of judicial resources, it should be dismissed.

B. Plaintiff has slept on his rights and litigates with the ebb and flow of the tide

(i) Legal standard - Judicial *estoppel*

The concept of judicial estoppel was discussed in *Kramer v. Globe Brewing Co.,* 175 Md. 461, 2 A.2d 634 (1938) and 59 years later affirmed by the same court. *See Winmark Ltd. v. MILES & STOCK BRIDGES*, 345 Md. 614, 693 A.2d 824, 827(1997) ("setting forth the rationale behind the doctrine of judicial estoppel, as follows:

> "`If parties in court were permitted to assume inconsistent positions in the trial of their causes, the usefulness of courts of justice would in most cases be paralyzed; the coercive process of the law, available only between those who consented to its exercise, could be set at naught by all. But the rights of all men, honest and dishonest, are in the keeping of the courts, and consistency of proceeding is therefore required of all those who come or are brought before them. It may accordingly be laid down as a broad proposition that one who, without mistake induced by the opposite party, has taken a particular position deliberately in the course of litigation, must act consistently with it; one cannot play fast and loose.'" *Id.* at 469, 2 A.2d at 637 (quoting *Bigelow on Estoppel* 783 (6th ed.) and citing *Ohio & Mississippi Ry. Co. v. McCarthy,* 96 U.S. 258, 267-68, 24 L.Ed. 693, 696 (1877) ('Where a party gives a reason for his conduct and decision touching anything involved in a controversy, he cannot, after litigation has begun, change his ground, and put his conduct upon another and a different consideration. He is not permitted thus to mend his hold. He is estopped from doing it by a settled principle of law.')).)"

(ii) Legal standard - *laches*

The Court has recently discussed the Doctrine of *Laches* in *Ross v. Board of Elections*, 876 A.2d 692, 387 Md. 649 (2005) pp. 703-5.

> The doctrine of laches first appears in the records of the Maryland Chancery Court proceedings of 1679. *Proceedings of the Court of Chancery,* 1669-1679, Vol. 51 at 561. The doctrine was recognized in this Court as well. *See, e.g., Demuth v. Old Town Bank of Baltimore,* 85 Md. 315, 317-18, 37 A. 266, 268-69 (1897); *Williams' Ex'rs v. Mayor and City of Annapolis,* 6 H. & J. 529 (1825); *Pearce v. Wallace,* 1 H. & J. 48 (1800). Throughout our history, we consistently have adhered to the principle that "[t]here is no inflexible rule as to what constitutes, or what does not constitute, laches; hence its existence must be determined by the facts and circumstances of each case." *Parker,* 230 Md. at 130, 186 A.2d at 197, citing *Brashears v. Collison,* 207 Md. 339, 352, 115 A.2d 289, 295 (1955); *Demuth,* 85 Md. at 317-18, 37 A. at 268-69.
>
> In *Buxton v. Buxton,* 363 Md. 634, 770 A.2d 152 (2001), we recently had the opportunity to examine the elements of laches:
>
> > [T]he word, itself, derives from the old French word for laxness or negligence.... The passage of time, alone, does not constitute laches but is simply `one of many circumstances from which a determination of what constitutes an unreasonable and unjustifiable delay may be made.'"

(iii) Argument -Plaintiff is guilty of *laches* or litigates as the wind blows

Plaintiff failed to amend his district court complaint and respond to court instructions to join Uncle Eddies brokedown palace LLC to the injunction. His delay is unreasonable and unjustifiable. Plaintiff already refused to dismiss Justin Holder from Quiet Title, arguing that the case was consolidated so he could prosecute the Quiet Title. In fact Plaintiff told the court that if it dismissed Justin Holder from Quiet Title, he would amend his trespass claims and rejoin Justin Holder.

When the court severed the consolidated case back into 2 actions on Feb. 4th 2022, Plaintiff had 2 months to amend his complaints, he did nothing. Plaintiff never requested leave of court after amendment of rights to rectify the terminal illness with his Quiet Title suit. Plaintiff never asked to join Uncle Eddies brokedown palace LLC to the injunction. Plaintiff has slept on his rights and is barred by the doctrine of *laches* and judicial *estoppel.* In good faith he must pick his poison, dismiss the severed trespass and ejectment claims; or dismiss his Quiet Title suit in equity. Amended pleadings can not cure his wretched disease!

C. Md. Rule 2-602(b) final judgment, res judicata, collateral estoppel and the bifurcated case

(i) Legal standard - Final Judgement must be certified by rule 2-602(b)

In order for *res judicata* to apply the litigation must be final or a portion final under Rule 2-602(b), *see Waterkeeper Alliance v. DEPT. OF AG.*, 439 Md. 262, 96 A.3d 105 (2014). In *Janes v. State,* 350 Md. 284, 711 A.2d 1319, 1324 (1998), it was discussed that:

> Collateral estoppel, or issue preclusion, began life and retains life as a common law doctrine. A common and well-established articulation of the doctrine is that '[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.' *Murray International v. Graham,* 315 Md. 543, 547, 555 A.2d 502, 504 (1989), quoting from RESTATEMENT (SECOND) OF JUDGMENTS, § 27 (1982). The functions of this doctrine, and the allied doctrine of *res judicata,* are to avoid the expense and vexation of multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibilities of inconsistent decisions. *Graham, supra,* 315 Md. at 547, 555 A.2d at 504, citing *Montana v. United States,* 440 U.S. 147, 153-54, 99 S.Ct. 970, 973-74, 59 L.Ed.2d 210, 217 (1979)."

(ii) Legal standard - *Res judicata* and issues that could have been litigated

In *Colandrea v. Wilde Lake*, 361 Md. 371, 761 A.2d 899 (2000) at p.908 "This Court has repeatedly recognized that there is a distinction between the principles of res judicata and collateral estoppel. *Bankers & Shippers Ins. Co. of New York v. Electro Enterprises, Inc.,* 287 Md. 641, 652, 415 A.2d 278, 284 (1980); *Cook v. State,* 281 Md. 665, 668-69, 381 A.2d 671, 673 (1978); *LeBrun v. Marcey,* 199 Md. 223, 226-27, 86 A.2d 512, 514 (1952). This distinction was recently expressed in *MPC, Inc. v. Kenny,* 279 Md. 29, 32, 367 A.2d 486, 489 (1977), (quoting *Sterling v. Local 438,* 207 Md. 132, 140-41, 113 A.2d 389, 393, *cert. denied,* 350 U.S. 875, 76 S.Ct. 119[, 100 L.Ed. 773] (1955)):

> "`... If the second suit is between the same parties and is upon the *same cause of action,* a judgment in the earlier case on the merits is an absolute bar, not only as to all matters which *were litigated* in the earlier case, but as to *all matters which could have been litigated* [res judicata]. If, in a second suit between the same parties, even though the *cause of action is different,* any determination of fact, which was *actually litigated* in the first case, is

conclusive in the second case [collateral estoppel].'" (Citation omitted) (emphasis added).

(iii) Legal Standard - Collateral *estoppel* facts actually litigated

This court affirmed the 'elements' of collateral estoppel reflect a fundamental concern for fairness in *Thacker v. Hyattsville*, 135 Md. App. 268, 762 A.2d 172, 182-3 (2000):

> "Defendants correctly point out that when a federal court disposes of a federal claim before trial, collateral estoppel may preclude the plaintiff from relitigating factual issues actually decided by the federal court. 'Federal law determines the preclusive effect of federal orders on a question of federal law, regardless of whether the court applying the federal judgment is state or federal.' *Nutter v. Monongahela Power Co.,* 4 F.3d 319, 321 (4th Cir.1993). The Fourth Circuit has explained that:
>
> > "`[c]ollateral estoppel or issue preclusion is premised on the notion that a judgment in a prior suit '"precludes relitigation of issues actually litigated and necessary to the outcome of the first action."'"*United States v. Wight,* 819 F.2d 485, 487 (4th Cir.1987) (quoting *Parklane Hosiery Co. v. Shore,* 439 U.S. 322, 326 n. 5, 99 S.Ct. 645, 649 n. 5 [58 L.Ed.2d 552] (1979)). Once a court decides an issue of law or fact necessary to its judgment, that decision can be binding upon a party to it if the party was given a "`full and fair opportunity' to litigate that issue in the earlier case." *Allen v. McCurry,* 449 U.S. 90, 94-95, 101 S.Ct. 411, 414-15 [66 L.Ed.2d 308] (1980) (citations omitted))."'
>
> *Fullerton Aircraft Sales & Rentals v. Beech Aircraft Corp.,* 842 F.2d 717, 720 (4th Cir.1988).
>
> The "'elements'" of collateral estoppel reflect this fundamental concern for fairness.
>
> > "'For collateral estoppel to apply, the proponent must establish that: (1) the issue sought to be precluded is identical to one previously litigated; (2) the issue must have been actually determined in the prior proceeding; (3) determination of the issue must have been a critical and necessary part of the decision in the prior proceeding; (4) the prior judgment must be final and valid; and (5) the party against whom estoppel is asserted must have had a full and fair opportunity to litigate the issue in the previous forum.'"

Sedlack v. Braswell Svcs. Group, 134 F.3d 219, 224 (4th Cir.1998). In this case, these elements have not been satisfied."

(iv) Legal Standard - Consolidation and Severance of claims and actions

"Where, as in the present case, the court does not make explicit whether it intended to resolve the consolidated case in joint or separate judgments, we must determine from the record and the applicable law whether the consolidated action should be treated as one case or multiple cases. In *Yarema v. Exxon Corp.,* 305 Md. 219, 236, 503 A.2d 239, 248 (1986), we stated: '[U]nless the trial court *clearly intends that a joint judgment be entered* disposing of all cases simultaneously, consolidated cases are not to be treated as a single action for purposes of Rule 2-602; instead, each one of the cases is to be treated as a separate action.' (Emphasis added); *see also* Md. Rule 2-503(a)."

Waterkeeper Alliance v. DEPT. OF AG., 439 Md. 262, 96 A.3d 105, 115-116 (2014).

Thus Count V (Quiet Title) is not a separate claim for purposes of appeal, *res judicata* or collateral *estoppel* without rule 2-602(b) certification. Indeed the remaining severed trespass *QCF* and ejectment actions are a "separate action" at law to test the validity of title.

(v) Legal Standard - Revisory Power of the trial court intrinsic fraud

Rule 2-535 : "**(b) Fraud, Mistake, Irregularity.** On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity. **Committee note:** This section is intended to be as comprehensive as Code, Courts Article, § 6-408." It is also well settled that Rule 2-535(b) generally applies to all final judgments. *See Owen v. Freeman,* 279 Md. 241, 245, 367 A.2d 1245 (1977); *Owl Club v. Gotham Hotels,* 270 Md. 94, 100, 310 A.2d 534 (1973). *Cf. Quartertime Video v. Hanna*, 321 Md. 59, 65 580 A.2d 1073 (1990):

"It is settled, however, that the provisions of Rule 2-535, as well as the identical provisions of its predecessor rule, are applicable only to final judgments. (Citations omitted) It follows that Rule 2-613(f), which creates a limited exception to Rule 2-535, is also applicable only to final judgments. As the "judgment" against Hanna was not final, Rules 2-535 and 2-613(f) did not apply.

> We hold, therefore, that Rule 2-602 was fully applicable to this case. The entry of the default judgment against Hanna remained an interlocutory order subject to the full discretionary revisory power of the trial court."

Thus a final judgement has not been certified under Md. rule 2-602(b) and this court has discretion to revise any interlocutory orders. The Defendant recognizes Md Rule 2-535(b) is applicable to extrinsic fraud. When fraud is found and the court can reverse the fraud it has no discretion to do otherwise, illustratively *see also* the dicta in *Tandra S. v. Tyrone W.*, 336 Md. 303, 648 A.2d 439 (1994):

> "The court determined that the 'limitations on the court's revisory power, imposed by Rule 2-535(b) and CJ § 6-408, are impractical in light of the specific circumstances' of the case. It concluded that [t]o compel a person, who is not the father of a child, to continue paying support for that child when the child's mother, the child's biological father, and the alleged father agree on the issue of paternity, and the child's birth certificate and name have been changed to reflect his true parentage, perpetuates injustice and defies common sense. Accordingly, the court held that the circuit court had not abused its revisory powers."

It would equally defy common sense and decency to allow a Plaintiff to obtain summary judgement by way of fraudulent affidavits and testimony of himself and surveyors concealing the title line deviation that is obvious and known.

(vi) Argument - The Plaintiff must obtain final judgement or the fact is not decided and has no collateral effect on the jury trial

When a claim is severed even if not certified by rule 2-602(b) "each one of the cases is to be treated as a separate action." Count V summary judgement has not been certified and this court maintains revisory power over all interlocutory orders. In this case this court has no discretion to deny Defendant's request to vacate its summary judgment on the boundary and allow the jury to decide the facts after hearing testimony of the surveyors. Any other result is unfair and denies the Defendants a right to fully and fairly litigate any/all facts necessary to judgment in any/all related matters.

CONCLUSION

Defendant Justin Holder's February 5th 2023 *Motion for new trial* and *Motion to alter or amend judgement of injunction* incorporated as if fully stated herein by reference. The Plaintiff through fraud, deception and despicable behavior has obtained relief in equity that is void and/or subject to immediate appeal. The court can not lawfully certify its decision in accordance with RP § 108(a), unless Plaintiff dismisses the severed claim/action testing the validity of title. Plaintiff is barred from maintaining suit in equity by clear letter of the law.

> **MD. Real Property Code Ann. § 14-108 (2021):**
> "(a)Any person in actual peaceable possession of property…if an action at law…is not pending to enforce or test the validity of the title…the person may maintain a suit in accordance with Subtitle 6 of this title in the circuit court for the county where the property or any part of the property is located to quiet or remove any cloud from the title, or determine any adverse claim."

The Defendant Justin Holder's verified answer(s) and Plaintiff's Exhibit 1 affidavit attached to his June 21st 2022 motion for summary judgement unequivocally proves plaintiff is not in peaceable possession of the property. This court's February 4th 2022 Order severing the trespass "action at law to test the validity of title" to the subject property "*in rem*" on Plat 9186 bar Plaintiff from relief in Count V according to irrefutable Md law. Plaintiff has passed amendment of rights and failed to amend his pleadings. Plaintiff successfully argued that the district court trespass action was in fact an action to test the validity of title and is judicially *estopped* from arguing that the severed trespass action/claims containing C-21-CV-21-000130 is no longer an action to test validity of title. *See Exhibit 1 - Plaintiff Motion toTransfer* at section 3, attached hereto and incorporated herein by reference.

If Plaintiff does not dismiss the severed claims/actions and opposes the Motion to Revise/Dismiss he has no good faith basis to do so because the law is crystal clear. Until this court certifies its judgement as final this Defendant has every right to fully and fairly litigate each and every issue of fact necessary/relevant to the claims and actions; and invokes the right to demand strict proof from the Plaintiff of each and every element of his case. To force this amount of effort on Defendants without substantial justification, opposite to all principals of law and equity is untenable. Count V must be dismissed as to Justin Holder.

WHEREFORE, Defendant Justin Holder moves this court for immediate dismissal of Count V (Quiet Title) because Plaintiff is barred by MD. Real Property Code Ann. § 14-108(a) (2021) in maintaining suit.

Respectfully submitted,

Justin K. Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, Maryland 21782
(240) 356-2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of February 2023, a copy of the foregoing Motion to Revise/Dismiss in accordance with MD. Real Property Code Ann. § 14-108(a), was served via the MDEC system to :
Timothy Maloney, Esq.,
Brandy Peeples, Esq.,
Robert Kline, Esq.,
Justin Holder, *Pro Se;*

Justin K. Holder, *Pro Se*

E-FILED; Washington District Court
Docket: 3/29/2021 2:19 PM; Submission: 3/29/2021 2:19 PM

IN THE DISTRICT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES	*	
Plaintiff	*	
vs.	*	Case No. D-112-CV-20-007201
JUSTIN HOLDER	*	
Defendant	*	

* * * * * * * * *

MOTION TO TRANSFER CASE TO THE CIRCUIT COUNTY FOR WASHINGTON COUNTY, MD

COMES NOW the Plaintiff, Benjamin N. Estes, by and through his attorney, Brendan M Callahan, and pursuant to Md. Rule 3-503(a)(2) and Cts. & Jud. Proc. Section 6-104(b), respectfully moves this Honorable Court to transfer the above-captioned cause to the Circuit Court for Washington County, Maryland to one consolidated with Case No. C-21-CV-20-000430, and for reasons states:

1. That Maryland Rule 3-503 (a)(2) states:

> "Transfer to Circuit Court for Consolidation. An action instituted in the District Court may be transferred to a circuit court for consolidation with an action pending in that court under the circumstances described in Code, Courts Article, § 6-104(b)."

2. That Maryland Courts and Judicial Proceedings Article, § 6-104(b) states:

> "(1) When actions involving at least one of the same parties, with the same subject matter, issues, and defenses arising out of the same circumstances, are instituted in the District Court and a circuit court of the State, the party who filed the action in the District Court may file a motion in that court to remove the action to the circuit court for consolidation with the action pending in circuit court."

3. That the above-captioned case involves the same parties, subject matter, issues,

defenses, and circumstances as Circuit Court Case No. C-21-CV-20-000430. Both allege trespass on the same area of land at the same time, and involve the same witnesses. However, Defendant's defense of superior title to the disputed property means that the Circuit Court will have to determine proper title to the disputed real estate prior to any litigation of any other issue. Currently, trial date is set in the District Court for June 7, 2021, but case number C-21-CV-20-000430 in the Circuit Court is not set until July 14, 2021.

4. That the issue of whether Defendant trespassed on Plaintiff's property requires resolution of which party holds proper title to the disputed property which are properly the jurisdiction of the Circuit Court.

5. That, since Defendant is claiming title to the disputed property, it is impossible for the District Court of Maryland for Washington County to rule on the issue of trespass prior to the Circuit Court for Washington County resolving the title dispute.

6. That it is in the interest of judicial economy and efficiency to transfer the above-captioned case to the Circuit Court for Washington County.

WHEREFORE, Plaintiff respectfully prays that this Honorable Court transfer the above-captioned case to the to the Circuit Court for Washington County, Maryland to one consolidated with Case No. C-21-CV-20-000430.

Respectfully Submitted,

/s/Brendan M. Callahan
Brendan M. Callahan
#9806230081
P.O. Box 1091
Prince Frederick, MD 20678
(443) 975-7420

brendan.callahan@callahanlawgroupllc.com

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 29th day of March, 2021, a copy of this Motion was mailed to Defendant Justin Holder at 308 W. Chapline Street, Sharpsburg, MD 21782..

/s/Brendan M. Callahan
Brendan M. Callahan

CERTIFICATE OF REDACTION

I DO HEREBY CERTIFY that the foregoing filing does not contain any restricted information under Rule 1-322.1.

/s/Brendan M. Callahan
Brendan M. Callahan

E-FILED; Washington Circuit Court
Docket: 2/5/2023 4:41 PM; Submission: 2/5/2023 4:41 PM

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES	*	
Plaintiff	*	
v.	*	
	*	CASE NO.: C-21-CV-20-000430
JUSTIN HOLDER, et. al,	*	
Defendant(s)	*	

* *

MOTION FOR NEW TRIAL

COMES NOW Defendant, Justin Holder, in proper person and files this Motion for new trial in accordance with Md rule 2-533, and for reasons states:

INTRODUCTION

Defendant comes before this court and will demonstrate without any opposition from Plaintiff, that the Summary judgement made as to the boundary was obtained by fraud and deceit. This has resulted in an indisputably unfair trial for the Defendants. The Defendants have been denied the opportunity to fully and fairly litigate facts that will weigh in their favor. The Defendant has discovered new evidence after trial, despite extreme diligence in attempting to obtain it before trial. The end result is a tragic miscarriage of justice that this court has no discretion to deny.

HONORABLE JUDGE WILKINSON'S "LESSON NUMBER ONE"

Honorable Judge Andrew Wilkinson made clear the courts expectation of candor:

> "No, no, Mr. Holder. That's the point of being an attorney. And I know you're not an attorney but you have decided to engage in these multiple cases of litigation on your own behalf and that's wonderful. You've very good at it. Okay. [MR. HOLDER: Thank you.]But the day you leave law school and you receive that diploma is the day that you burn into your brain lesson number one. And lesson number one is you better not say it in a courtroom and you better not write it in a piece of paper unless you know it's true. And if your clients lie to you, you better not go along with a client that is lying to you. Stop looking at Mr. Estes. Stop looking at Ms. Prawde. You look at me."

THE UNFAIR TRIAL AND MISCARRIAGE OF JUSTICE

On the afternoon of December 15th 2022 Plaintiff Benjamin Estes, Esq. (a licensed attorney) swore to this court to tell the whole truth and nothing but the truth. During cross examination Defendant Holder handed Plaintiff *Exhibit 8-8 - Affidavit of Benjamin Estes,* whereupon Defendant Justin Holder asked Plaintiff: "What personal knowledge do you have from 1993 to 1998 of the use of the property shown on that plat 9186?" Plaintiff:

> "I think you're getting caught up on personal knowledge, legal definitions of personal knowledge...I think you're getting caught up that I purposely lied or, or said something that isn't accurate. Do I have personal knowledge from 1993 or whatever it is? No, if you're talking about personal knowledge that I was there for every day for twenty years and didn't see anyone go there. No... And it's my contention or the contention my attorney...the argument was that, look, we own this land. It's very clear from all the deeds that we own it. But in the alternative if the Court were to say, oh, you don't own it, then this is an argument for adverse possession. That's all it is. So, if you want to go ahead and try to impeach me about what personal knowledge really means, have at it, sir,"

Defendant Justin Holder had at it per Plaintiff's request: "Can you read this statement you signed under oath on the back of the affidavit?" Plaintiff: "Sure...'I solemnly affirm under penalties of perjury and upon personal knowledge that the contents of this documents are true.'" Defendant Justin Holder followed up: "Okay, so, would it be fair to say that every Affidavit that you filed into this case is upon information and belief and not personal knowledge? Did you have it - - Did you have it, maybe a misunderstanding of what personal knowledge is?" Plaintiff's counsel objected 3 times and ultimately the Court stated: "Mr. Holder. I understand your point," (the "impeachment.")

Plaintiff Estes regurgitated a mouthful, but he failed to utter 1 morsel of "personal knowledge...from 1993 to 1998 of the use of the property shown on that plat 9186." Plaintiff did testify "It's very clear from all the deeds that we own it." When in fact all the deeds in land records make it clear Mr. Estes does not own it, because Defendant Justin Holder will unambiguously demonstrate *infra;* but for the title line deviation on Plat 10955 all the deeds in land records conclusively show Uncle Eddies brokedown palace LLC "owns it. Defendant Justin Holder incorporates the section titled "PROCEDURAL POSTURE" from his

February 5th 2023 *Motion to alter or amend judgement of injunction;* and *Motion to Revise/ Dismiss in accordance with MD. Real Property Code Ann. § 14-108(a)* by reference as if fully stated herein. Thus when presented with Summary judgement as to his title on April 28th 2021[1] the only evidence Estes could produce to oppose was an argument for adverse possession that he fraudulently swore was under personal knowledge. When questioned about the facts of the affidavit Plaintiff obtained a protective order and this Defendants hands were tied[2] to further discover any. This can not be fair and just.

The court must agree that Honorable Andrew Wilkinson's "Lesson Number One" is intertwined with fair trials and litigation. Our rules of professional conduct, testimony and authenticity of evidence all rely on "Lesson Number One." Plaintiff or his attorneys can not argue that his affidavit was truthful, it was not. Plaintiff can not deny his affidavits were material and necessary for the judgements entered, they were. Plaintiff must acknowledge his victory is a fraud, because it is. This court must right the wrong in the interest of justice.

LEGAL STANDARD - NEW TRIAL

"**(a)Time for Filing.** Any party may file a motion for new trial within ten days after entry of judgment....**(b)Grounds.** All grounds advanced in support of the motion shall be filed in writing within the time prescribed for the filing of the motion, and no other grounds shall thereafter be assigned without leave of court. **(c)Disposition.** The court may set aside all or part of any judgment entered and grant a new trial to all or any of the parties and on all of the issues, or some of the issues if the issues are fairly severable. If a partial new trial is granted, the judge may direct the entry of judgment as to the remaining parties or issues or stay the entry of judgment until after the new trial." *Rule 2-533 - Motion for New Trial, Md. R. Civ. P. Cir. Ct. 2-533.* "The purpose of granting a new trial is to avoid injustice, and we do not believe that the level of a party's participation in the proceedings should dictate whether

[1] Timothy F. Maloney, CPF #86060102045 and Alyse L. Prawde, CPF #14121180033 of Joseph Greenwald & Laake, PA respectfully submitted to this court on June 21st 2022, an affidavit with precisely the same language as Exhibit 8-8 discussed as the *impeachment supra.*

[2] It was discovered on June 7th 2021 by attached *Exhibit A - Errata*, that surveyor Frederic Frederick "was not provided any title work by anyone prior to completing this project." Defendant Holder requested a limited deposition on the aforementioned "substantive change" and Mr. Frederick made motion and was granted a protective order. Despite his diligence, Defendant's hands were again tied.

that party may suggest that an injustice would result if an excessive verdict were allowed to stand." *Banegura v. Taylor*, 312 Md. 609, 541 A.2d 969 (1988). Md authority held in *Cam's Rugs v. Buck,* 87 Md. App. at 575-76, 590 A.2d 1060 (1991) that a trial court may grant a new trial for any reason if the party was denied a fair trial:

> "Trial courts in Maryland are empowered with a discretion to grant a new trial as a safety valve to prevent a miscarriage of justice due to an improper verdict. Consequently, the trial court may grant a new trial for any reason that will support its determination that a party was denied a fair trial, and there is nothing in Md. Rule 2-533 which precludes a judge from granting a new trial on the basis of an issue that could have been, but was not, raised during trial. Moreover, an abuse of argument has been recognized as one of a list of grounds which will support the grant of a new trial." (citations omitted).

In *Buck v. Cam's Rugs*, 328 Md. 51, 58, 612 A.2d 1294 (1992) it was held the court has no discretion in denying a Motion for new trial when "new evidence of sufficient significance to make it probable that a different result would be reached:"

> "On the other hand, a trial judge has virtually no 'discretion' to refuse to consider newly discovered evidence that bears directly on the question of whether a new trial should be granted. *See Wash., B. & A.R. Co. v. Kimmey, supra,* 141 Md. at 250, 118 A. 648 ('discretion could not be characterized as sound which wholly disregarded evidence by which its exercise should have been aided'). *See also Browne v. Browne,* 22 Md. 103, 112 (1864). And, if newly discovered evidence clearly indicates that the jury has been misled, a new trial should be granted.
>
> It would be plainly unjust to permit a verdict to stand, as against an application for a new trial seasonably made, if credible evidence, competent to be considered, and not previously discoverable by due diligence, supported the conclusion that the jury were misled as to the principal part of their award. *Wash., B. & A.R. Co. v. Kimmey, supra,* 141 Md. at 250, 118 A. 648. *See also Angell v. Just,* 22 Md. App. 43, 53, 321 A.2d 830 (1974) (trial judge abused discretion in denying motion for new trial when newly discovered evidence was of sufficient significance to make it probable that a different result would be reached at a new trial). Similarly, where competent extrinsic evidence discloses that a jury's consideration of the case was seriously distorted by information that should not have been before the jury, a trial judge may have little or no "discretion" to deny a new trial. *See Wernsing v. General Motors Corp., supra,* 298 Md. at 420, 470 A.2d 802 (...trial judge abused discretion in denying new trial)."

I. THE NEWLY DISCOVERED EVIDENCE PROVES THE JURIST WAS MISLED AND ITS CERTAIN A DIFFERENT DECISION WOULD BE REACHED

A. Undisputed Facts - Discovery of new evidence and diligence of Defendant

1. My name is Justin K. Holder and I am 18 years of age having personal knowledge of the acts set forth herein and am competent to testify.

2. *Exhibit A - Errata* is a true and accurate copy of a document provided to me by counsel for Mr. Frederic Frederick.

3. *Exhibit B - 2022-03552 cert letter 1-31-23* (the "newly discovered evidence.") is a true and accurate copy of pertinent pages of a certified public record kept at the Maryland Dept. of the Environment.

4. Exhibit C - Subpoena Duces Tecum MDE Corporate Designee is a true and accurate copy of the pertinent pages of a Subpoena, Notice of Deposition and Document Request I sent to the Maryland Dept. of Environment.

5.On or around August 26th 2021, I read a document wherein Defendant Uncle Eddies brokedown palace LLC requested Plaintiff produce: "Any and all Documents which relate, refer, or pertain to any Communications by and between you and any person which relate to the material facts of the Amended Complaint or your intended prosecution thereto. Do not include communications with your counsel."

6.On or around January 2nd 2021 at 8:47AM, I read a paper filed in case c-21-cv-20-430 by Plaintiff Estes (or agent) titled "PLAINTIFF'S RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS AND ENTRY UPON LAND FROM DEFENDANT JUSTIN HOLDER" that states: "Document Request #7. All correspondence sent to or received from any source relevant to the subject occurrence" and after objection(s) responding "Plaintiff is not in the possession, custody or control of any documents responsive to this request as the term 'occurrence', as defined in the Defendant's request refers to 'alleged activities constituting the bases of the relief sought in the Petition for Peace Order.'"

7. On or around February 12, 2020, I read a Petition for a Peace Order in the District Court of Maryland for Washington County. In said Petition, Estes stated, under oath, that Respondent Justin Holder "indicates that he [believes] he has the right to enter my land at any time," and that Justin Holder told him "the creek is a public waterway."

8. Plaintiff or Md Department of the Environment did not produce the newly discovered evidence in response to discovery prior to the December 15th 2022 trial.

9. On or around November 16th 2022 I read *Exhibit D - Feb. 5th 2018 water commission minutes of the Town of Keedysville,* a true and accurate copy, states: "Mr. Levey noted the resident complaint filed with MDE questioning the adequacy of the Town's water supply to sustain growth. The Town is in the process of responding."

10. On or around December 12th 2022 I read *Exhibit E - Findings Letter 2022-03552,* a true and accurate copy, states: "RE: Tracking Number: 2022-03552
Request Received November 16, 2022 A Copy of the Correspondence from Benjamin Estes in the Keedysville Spring File"

11. On or around January 20th 2023 I read *Exhibit F - Gmail - 202203552,* a true and accurate copy, states: "Mr. Holder, Please see the attached information from the Water Supply program. Kathy" and the newly discovered evidence was attached to *Exhibit F - Gmail - 202203552* when I received the email.

12. *Exhibit G - Motion For Summary Decision* is a true and accurate copy of a paper I submitted to the Maryland Insurance Commission containing an affidavit on pages 3-7 at section titled "**UNDISPUTED FACTS**" which I restate herein facts 1-25 and reaffirm.

13. The *Exhibit G - Motion For Summary Decision* includes 9 Exhibits: true and accurate copies of Exhibits 1 and 3 were accepted into evidence at the December 15/16th 2022 trial *Estes v Holder;* true and accurate copies of Exhibit 4 and 8 were attached to my Opposition to Plaintiff Estes' June 21st 2022 Motion for Summary Judgement; true and accurate copies of Exhibit 6 and 7 were attached as copies to my AFFIDAVIT - RECORDED TITLE which was attached to an August 29th 2021 Motion to Dismiss I filed; a true and accurate copy of Exhibit 9 was attached to my May 7th 2022 Motion for Summary Judgement; and a true and accurate copy of *Exhibit 2 - Title Insurance Commitment OT-13228* and *Exhibit 5 - Estes Deed* are attached to the instant Motion for New Trial.

VERIFICATION OF UNDISPUTED FACTS

I, Justin Holder, hereby declare or affirm under the penalties of perjury and personal knowledge that the facts 1 through 13 above and matters set forth in the forgoing § A. titled "**Undisputed Facts - Discovery of new evidence and diligence of Defendant**" are true and correct; and (1) the filer has read the entire document (limited to pertinent pages where so stated); (2) the filer has not altered, or authorized the alteration of, the text of the verified material; and (3) the filer has personally filed the submission pursuant to Rule 20-108.

Justin K. Holder, *Pro Se*[3]

[3] *"signer's digital signature [affixed] to the document." Rule 20-107 - Mdec Signatures, Md. R. Elec. Fil'g & Case Mgmt. 20-107*

B. Plaintiff's evidence and testimony at trial

In support of his June 21st 2022 Motion for Summary Judgement, Plaintiff submitted:

1. *Ex. 1 - Estes Affidavit*[4] which was impeached: at ¶¶16. & 22; ¶32 can not be the "whole truth" and is deceiving; ¶11 "the Estes Property primarily in dispute (the "Disputed Property") is highlighted"; ¶14 "Ex. 5...is a true and accurate copy of a deed containing a...legal description of the Holder Property..." Ex. 5 clearly states:

> "**Said lands intended on being all of the remaining lands as conveyed** by Ivan S. Hammond and Virginia Hammond, his wife to Harry C. Hutzell Jr. and Mary Jane Hutzell, his wife by deed dated May 20, 1964 and **recorded at Liber 408, folio 137** among the Land Records of Washington County, Maryland." (Emphasis added)

2. *Ex. 13 - Frederick Dep. Excerpts* when Counsel for Plaintiff asked: "Is it your opinion to a reasonable degree of professional certainty that the shared boundary line shown on this plat, number 10955, accurately depicts the actual boundary lines between the Estes and the Holder/Uncle Eddies property line?" Mr. Frederick said: "That is my professional opinion;" and when asked "Was it your firm that changed the monuments to the fence and the blazed tree from the prior monuments?" Mr. Frederick answered "Yes." because in *Mr. Frederick February 13th, 2020 letter* referring to the Disputed Property he states "we held those old possession lines."[5]

3. *Ex. 14 - Dowling Affidavit ¶¶ 5 & 6* declares "to a reasonable degree of probability... the boundary line between the Estes Property and the Holder Property is accurately described..." on Plat 9186 and "My opinion....is based on the fact that the title deeds contain specific courses and distances for the shared boundary line...[and] the existence of a [possession] fence line..." but n March 18th 2022 Licensed surveyor John Dowling swears under oath: ""Obviously, [Frederick] signed and sealed it, and [Frederick] thinks it's correct, but [Frederick] wouldn't testify in court that it was correct. And I am willing to testify in court that it matches the title lines, **except for the one place that it deviates,**"[Emphasis Added] the Disputed Property at ¶11 *supra*.

At December 15/16th 2022 trial Plaintiff's evidence was entered by himself and wife. Plaintiff and wife both signed the newly discovered evidence representing to Md. Dept. of the Environment that: "Whereas, there has been considerable visible change in the flow of

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[4] ¶¶23-31 will be impeached during the trespass proceeding because Plaintiff has admitted under oath he has no personal knowledge of those facts, but provide clear proof of Defendant's possession

[5] This Courts *September 19th, 2022 Opinion & Order on Count V* states "Where strict application of the monument rule would defeat the clear intentions of the original parties, the rule is not applied" footnote 12: "*Zawalsky*, 203 Md. at 187, citing *Giles v. diRobbio*, 186 Md. 258, 265 (1946)." In *Giles* the surveyor did the same as Mr. Frederick creating a monument, so the court held the courses, thus the courts will find no support in *Giles* to hold Mr. Frederick's "possession fence" monument.

the Keedysville Spring water outflow through and near the undersigned's land in the absence of formal drought conditions." The court made a decision on January 30th 2023 based on the evidence presented by Plaintiff and wife to determine the fact of "navigability," the court decided was material to injunction, (Defendant disagreed.) Plaintiff and wife testified the public waterway could not be navigated by canoe or kayak.

C. Argument - The court was misled and the newly discovered evidence is not cumulative, but material to the issues and will produce a different result

Plaintiff and Maryland Department of Environment were compelled by Defendant in legal civil process of Subpoena and document production to produce the newly discovered evidence. The court's January 30th 2023 Order is dependent upon its factual finding of navigability.[6] At trial Plaintiff offered himself, who was severely impeached and his wife whom the newly discovered = evidence shows material omission at a minimum. Plaintiff and wife both testified the creek and spring branch could not be navigated because of its depth. Plaintiff testified the creek was always the same depth, and provided pictures without a timeframe generally. With the newly discovered evidence of higher water levels certainly a different result would be reached.

D. Argument - With the newly discovered evidence the Defendant would not have needed to put on evidence because he could have moved for judgement

The Defendant's evidence after close of Plaintiff's case not need be considered. With the newly discovered evidence to cross examine Plaintiff and wife the record should indicate a "considerable" increase in water flow/level, perhaps above Plaintiff's foot bridge that the Defendant's exhibit 27 - MDE complaint, states is in the cross section of the waterway channel. This evidence rebuts the testimony with statements against the interest of Plaintiff and wife, signed and sealed to our state government. The Plaintiff's evidence at trial would not be credible enough to be conclusive in determining the fact of "navigability." Thus no inferences could be drawn that Plaintiff can prove the water is not navigable, his

[6] Defendant holds the position navigability is irrelevant to the rights of the Public in the "waters of the state," but for purposes of this motion it is irrelevant because the court ruled otherwise.

burden to prove, if he is to be successful in injunction. Defendant's would have successfully moved for judgement (perhaps summarily) and avoided the remaining trial and expense.

II. THE UNFAIR TRIAL - A NOTE ON BIAS, PREJUDICE AND DISABILITY

A. Argument - Common issues of fact, severance and consolidations

Md. Rule 2-503(a) "When actions involve a common question of law or fact or a common subject matter...may order...consolidation of any or all of the claims, issues, or actions." and *Md. Rule 2-503(b)* "" In furtherance of convenience or to avoid prejudice, the court, on motion or on its own initiative, may order a separate trial of any claim..." Plaintiff's claims of Trespass to try title, Ejectment and Quiet title all involved "common questions of law or fact" that would have been "convenient" to try together. The severance will prejudice this Defendant by having to live the rest of the trial re-litigating the fraud in Plaintiff's affidavits and deceit of his Motion for Summary judgement. This court's integrity has been placed in question by the Plaintiff and surveyors Frederic Frederick and John Dowling when Plaintiff represented in his June 21st 2022 Motion for Summary judgement there was no dispute to the fact of the courses and distance boundary. Mr. Frederick and Mr. Dowling said the boundary line followed Plat 10955 with "a reasonable degree of certainty." This Defendant produced Mr. Frederick's letter and Mr. Dowling's deposition that unambiguously illustrate a title line deviation where plat 10955 comes out of the creek and goes on land following what Mr. Frederick and Mr. Dowling both described as a title line deviation following a fence line/possession line. Plaintiff Estes lied on his affidavit and has no personal knowledge of predecessor adverse possession. The title deviation is precisely illustrated in *Exhibit G - Motion For Summary Decision,* and this Defendant will continue to litigate his rights until the court certifies its decision as final, or orders otherwise. The Plaintiff can not and will not dispute the truth of the matters declared in *Exhibit G - Motion For Summary Decision,* because he obtained his summary judgement through fraud.

B. Standard of review - In summary judgement the court can not weigh evidence

"Summary judgment is not a substitute for trial. Stated differently, its purpose is not to try the case or resolve factual disputes. Rather, the procedure is designed to determine whether a factual controversy exists requiring a trial. Thus, in keeping with Maryland law,

the trial judge is not allowed to weigh evidence. This principle is also expressed in federal case law. *See, e.g., Anderson v. Liberty Lobby,* 477 U.S. 242, 249, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202, 212 (1986) ('[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'). It is also true that, under Maryland law, the non-movant bears no burden of proof at the summary judgment stage. Rather, after the moving party has produced sufficient evidence in support of summary judgment, the non-movant 'must demonstrate that there is a genuine dispute of material fact by presenting facts that would be admissible in evidence.' 'A material fact is a fact the resolution of which will somehow affect the outcome of the case.' In addition, those facts must be presented 'in detail and with precision,' general allegations are insufficient. (Citations Omitted) . Finally, in determining whether there is a genuine dispute of material fact, the court must resolve all inferences against the moving party." (Citations Omitted) *Goodwich v. Sinai Hosp. of Baltimore, Inc.*, 343 Md. 185, 205-8 (1996).

C. Argument - This court could revise its order on boundary at anytime prior to final judgement and should to maintain the integrity of the court

The Plaintiff's counsel was present in depositions of Mr. Frederick and presented with *Mr. Frederick February 13th, 2020 letter.* Plaintiff testified at trial he received a title opinion of Jack Steich in March of 2020. Plaintiff himself was present for the entire deposition of John Dowling, Esq. Plaintiff Estes could not have acted in good faith with substantial justification when he filed a Motion for Summary Judgement as officer of the court claiming no dispute of material fact existed as to the location of the shared boundary. Plaintiff's interrogatory answers made clear he believed the boundary was intended to be the NN520 deeds courses and distances, but then misrepresented that Plat 9186 or 10955 correctly represented those title lines. Plaintiff Estes knew the title deviation in the Northeast corner of Plat 10955 followed a possession fence because Mr. Frederick's letter and John Dowling's deposition told him so, yet he did nothing to explain that to the court, instead he concealed it. Plaintiff Estes could have presented facts of "voluntary conduct or

representation, reliance, and detriment," he did not. Plaintiff chose to deceive, lie and cheat. This court demands higher standards and integrity from its litigants to be afforded equity.

D. Standard of review - Transfer of title to real property by *estoppel* is disfavored

"This Court has also held that a claim of equitable estoppel, with respect to the title of real property, can only succeed where:

> `... the party claiming to have been influenced by the conduct or declarations of another to his injury was himself not only destitute of knowledge of the true state of the title, but also of any convenient and available means of acquiring such knowledge. ***Where the condition of the title is known to both parties or both have the same means of ascertaining the truth, there can be no estoppel.'*** *Mountain Lake Park Ass'n v. Shartzer*, 83 Md. 10, 13-14, 34 A. 536, 537 (1896) (quoting *Brant v. Virginia Coal & Iron Co*., 93 U.S. 326, 337, 23 L.Ed. 927, 929-30 (1876)) (emphasis added)." *Jurgensen v. New Phoenix*, 380 Md. 106, 843 A.2d 865, 876 (2004).

Equitable estoppel essentially consists of three elements: "voluntary conduct or representation, reliance, and detriment." *Mona Elec. Co. v. Shelton*, 377 Md. 320, 334 (2003) (citing *Creveling v. Gov't. Employees Ins. Co*., 376 Md. 72, 102, 828 A.2d 229, 246 (2003)).

III. THE COURT'S ORDER IN INJUNCTION IS UNREASONABLE, OVERBROAD AND UNDESERVED BY PLAINTIFF - THE MISCARRIAGE OF JUSTICE

A. The Court's second order - Permission

> On January 30th 2023 this court:
> "ORDERED, that Defendants Justin Holder, Deena Holder, Uncle Eddie's Brokedown Palace, LLC, and any member or agent thereof, shall not grant permission to any other person to come into contact with Plaintiff's land within Plaintiffs property lines as determined in this case, including the land under the water of the Little Antietam Creek and its tributaries within Plaintiff's property lines."

(i) Defendant has no authority to exclude the public from the creek

Defendant Justin Holder incorporates his February 5th 2023 *Motion to alter or amend judgement of injunction* as if fully stated herein. The Defendant can not lawfully deny members of the public access to the waters of the state. What is Plaintiff's dogs attack a watercraft and the occupants can not swim? Should the Defendant watch them drowned in fear of this court's contempt? Should Defendant deny access to first responders if an

accident occurs in the creek? The injunction pertaining to permission to use "land under the water of the Little Antietam Creek and its tributaries" is unreasonable.

With no remorse whatsoever Plaintiff would come back to this court with a personal affidavit stating he has personal knowledge Defendants granted someone permission to be in the creek. This would be so whether or not someone was even in the creek because Plaintiff has no reservations in declaring under penalties of perjury he has personal knowledge of material facts when he has no personal knowledge. This court is placing Defendants in a position of being forced to monitor the Little Antietam Creek with hired security and video surveillance systems producing admissible evidence to dispute Plaintiff's lies. This is unjust and unreasonable. The court should conduct a new trial in light of the new evidence and revise its order.

B. <u>This court should not reward fraud, he who wants equity must do equity</u>

(i) <u>Standard of review - Fraud</u>

"It has long been the law of Maryland and, thus, well settled, that a defendant, intending to mislead the plaintiff and fully aware that he or she does not know whether the representation he or she makes is true or false, commits the tort of fraud or deceit. E.*g*., *Robertson v. Parks*, 76 Md. 118, 131, 24 A. 411, 412 (1892). The rationale underlying the rule is that making a representation of a fact, with intent to deceive and actual knowledge that the speaker does not know whether it is fact or not, is as much a misrepresentation as one made with actual knowledge of falsity and that actual knowledge of the former is as reprehensible as actual knowledge of the latter." Judge Bell dissenting in *Ellerin v. Fairfax Savings*, 337 Md. 216, 244 (Md. 1995). The Opinion of the court relied on a broader authority:

> "Other jurisdictions, like Maryland, that restrict the tort of fraud or deceit to its traditional elements, generally hold that proof of fraud, without more, is sufficient for the availability of punitive damages. *See, e.g., O'Leary v. Industrial Park Corp.,* 211 Conn. 648, 651, 560 A.2d 968, 970 (1989); *Amber Properties v. Howard Elec. & Mech.,* 775 P.2d 43, 46 (Colo. App. 1988); *First Interstate Dev. v. Ablanedo,* 511 So.2d 536, 539 (Fla. 1987) ("[P]roof of fraud sufficient to support compensatory damages necessarily is sufficient to create a jury question

regarding punitive damages. This is so because intentional misconduct is a necessary element of fraud"); *Nappe v. Anschelewitz, Barr, Ansell & Bonello,* 97 N.J. 37, 50, 477 A.2d 1224, 1231 (1984) ("it is especially fitting to allow punitive damages for actions such as legal fraud, since intent rather than mere negligence is the requisite state of mind"); *Shaver v. N.C. Monroe Constr. Co.,* 63 N.C. App. 605, 616, 306 S.E.2d 519, 526 (1983) ("punitive damages may be recovered as a matter of law in fraud cases, because fraud, by its very nature, involves the element of aggravation or intentional wrongdoing"). Furthermore, where the torts of intentional fraud and negligent misrepresentation are distinct within a single jurisdiction, different punitive damages standards have been applied to each. *Compare, e.g., McMullin v. Murphy,* 89 Or. App. 230, 234, 748 P.2d 171, 173 (1988) (holding that "evidence sufficient to establish intentional fraud is also necessarily sufficient to support the requisite findings for the imposition of punitive damages") *with Schmidt v. Pine Tree Land Development Co.,* 291 Or. 462, 466, 631 P.2d 1373, 1375 (1981) (in banc) (requiring, in the case of reckless misrepresentation, something more than the elements of the tort to support punitive damages)." *Id* at p. 239-241.

MD. Criminal Law Code Ann. § 9-101 (2021):

"(a) A person may not willfully and falsely make an oath or affirmation as to a material fact: (1) if the false swearing is perjury at common law; (2) in an affidavit required by any state, federal, or local law; (3) in an affidavit made to induce a court or officer to pass an account or claim; ...(5) in an affidavit or affirmation made under the Maryland Rules....(c) (1) **If a person makes an oath or affirmation to two contradictory statements**, each of which, if false, is prohibited by subsection (a) of this section, it is sufficient to allege, and **for conviction to prove, that one of the statements is willfully false without specifying which one.**" (Emphasis Added)

MD. Criminal Law Code Ann. § 9-102 (2021):

"(a) A person may not procure another to commit perjury as prohibited by § 9-101 of this subtitle."

Rule 19-303.3 - Candor Toward the Tribunal (3.3), Md. R. Att'y 19-303.3:

"**(a)** An attorney shall not knowingly: **(1)** make a false statement of fact or law to a tribunal or **fail to correct a false statement of material fact or law previously made to the tribunal by the attorney**; **(2)** fail to disclose a material fact to a tribunal when disclosure is **necessary to avoid assisting a criminal or fraudulent act by the client**; **(3)** fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the attorney to be directly adverse to the position of the client and not disclosed by an opposing attorney; or **(4)** offer evidence that the attorney knows to be false. **If an**

attorney has offered material evidence and comes to know of its falsity, the attorney shall take reasonable remedial measures." (Emphasis Added)

(ii) Standard of review - Bad faith and substantial justification

Md. Rule 1-341 provides: "In any civil action, if the court finds that the conduct of any party in maintaining... any proceeding was in bad faith or without substantial justification..." sanctions may be appropriate. For example in *Needle v. White*, 81 Md. App. at 476, the Court of Special Appeals defined substantial justification as "a reasonable basis for believing that a case will generate a factual issue for the fact-finder at trial." "In bad faith" means vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons. *See Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 766, 100 S.Ct. 2455, 2464, 65 L.Ed.2d 488, 501 (1980); *Johnson v. Baker*, 84 Md. App. 521, 581 A.2d 48, cert. denied, 322 Md. 131, 586 A.2d 13 (1990)." *Inlet Associates v. Harrison Inn Inlet, Inc*., 324 Md. 254 (1991).

(iii) Argument - The miscarriage of justice is born from Plaintiff's fraud and his attorneys must disclose it to the court in accordance of the rules

Plaintiff has filed 2 affidavits; and signed his verified complaint stating he had personal knowledge of his property from 1993 through 2010. Plaintiff later testified under oath he had no personal knowledge of the his property prior to purchase and had only been to the eastern railroad bridge on Plat 10955 1 time prior to 2010. Indeed the 2 statements are contradictory which flat out is sufficient to prove perjury by law. The record reflects Plaintiff has made additional contradictory statements with the intent to deceive, and in Maryland this is malicious in nature, with automatic punitive damage awards. Plaintiff is an attorney and the rules of conduct demand that he correct any material frauds placed upon the court.

It was discovered Plaintiff filed a false affidavit related to his personal knowledge of predecessor adverse possession at trial. Indeed the Plaintiff testified his affidavits represent his argument and contentions and may not even be based on information and belief. This court took Plaintiff at his good word as a licensed attorney of the Md bar, and must grant a new trial since Plaintiff's evidence no longer meets the standards required under Md. rule

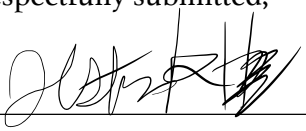
2-501 for summary judgement. Plaintiff's attorneys can not argue otherwise because they are required to disclose the material misrepresentations and frauds of their client. Thus the factual dispute as to courses and distances must go to trial to be adjudicated or a tragic miscarriage of justice is the end result, no matter how poorly the defendants litigated.

CONCLUSION

The Plaintiff deceived this court with his May 12th 2021 and June 21st 2022 affidavit(s) and testimony failing to mention the title deviation. Plaintiff can not establish superior title to the swamp area in the northeast of Plat 10955, because he has none. Plaintiff Estes deceived this court in his fraudulent affidavit to defeat Summary Judgement on May 12th 2021, needlessly drawing out the litigation in bad faith. Plaintiff and surveyor Frederic Frederick obtained protective orders further delaying justice. The adverse facts decided under guise of equity with fraudulent affidavits bear heavily on Defendant during a jury trial of now severed actions. The totality of circumstances has resulted in an unfair trial.

This Court should grant a new trial because the trial was unfairly litigated, justice was miscarried; the new evidence proves the court was misled and there will certainly be a different result in the new trial without the fraudulent affidavits and testimony.

Respectfully submitted,



Justin K. Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, Maryland 21782
(240) 356-2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of February 2023, a copy of the foregoing Motion for new trial was served via the MDEC system to :
Timothy Maloney, Esq.,
Brandy Peeples, Esq.,
Robert Kline, Esq.,
Justin Holder, *Pro Se;*

Justin K. Holder, *Pro Se*

AF02DDB JUNE 7, 2021

LETTER TO DEPOSITION OFFICER/ERRATA SHEET

DEPOSITION OF: FREDERIC FREDERICK

DATE OF DEPOSITION: APRIL 27, 2021

CASE: BENJAMIN ESTES VS. JUSTIN HOLDER

The following are the corrections which I have made to my transcript:

PAGE#	LINE#	CORRECTION	REASON FOR CORRECTION
48	22	Initially I thought Olde Towne ordered this survey. In reviewing the work order for this project, I now see that Justin Holder ordered this survey. See my previous response at p. 11, line 18-20.	I Initially thought Olde Towne ordered this survey only because I recalled supplying them with this survey and description when the work was complete. The survey was actually ordered by Mr. Holder.
49	3-6	I was not provided any title work by anyone prior to completing this project.	My answer to the prior question was altered requiring me to alter this follow-up question.
49	9 -17	In reviewing the work order for this project, I now see that Justin Holder ordered this boundary survey - not an ALTA survey. See my previous response at p. 11, line 18-20.	My answer to the prior question was ~~altered requiring me to alter this follow-~~ up question.
54	8 - 11	A boundary survey was needed ~~because it also had an old property~~ description that had a forced closure.	As previously stated, the title company did not order the survey.

Please sign your name and date it on the below line. As needed, use additional paper to note corrections, dating and signing each page. If you have no corrections, please write the word "None" above and sign, date, and return this page.

EXECUTED this 11 day of June, 2021,

at Hagerstown, MD,
(City) (State)

(Signature)

Frederic M. Frederick

IN THE OFFICE OF INSURANCE COMMISSIONER, M.I.A.

Justin Holder, et *al.*	*	
Complainants	*	
v.	*	
First American Title Insurance Company	*	CASE NO.: MIA -2022 -06–018
Respondent(s)	*	

* *

MOTION FOR SUMMARY DECISION

COMES NOW Complainant, Justin Holder, in Proper Person, and files this Motion for Summary Decision, and for reasons states:

OVERVIEW

This Complaint comes to MIA after insurer First American Title ("FAT") declined a defense to a trespass lawsuit filed by a neighbor to Complainants, Benjamin Estes ("Estes.") The property where the alleged trespass took place was included in the legal description contained in FAT's Title Commitment Letter submitted in response to this complaint. The title descriptions for the Complainants' properties in Keedysville, Maryland remained consistent from 1832 until 2018. Estes legal property description remained constant from 1888 until 1991 whereupon surveyor Frederic Frederick placed a new description on record introducing new monuments along what he claims was a possession line. Both Estes' and Complainants' property descriptions contain a "being the same as" clause relating back to the older property descriptions prior to the deviation by Frederic Frederick. Maryland law suggest that the Complainants' title extends to the thread of the creek, however for purposes of this hearing it is sufficient to establish there is no genuine dispute that a title line deviation exists by courses and distances, reserving that argument for court.

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The legal description contained in FAT's title commitment they have submitted to MIA precisely agrees with the Estes property description for the southern 2 boundary lines. Beginning at point "562" on the illustration *infra,* the title lines deviate with points "503" and "504" (thin black line) being part of the older property descriptions; and points "563", "554" and "555" (thicker blue line) being part of the Frederic Frederick deviation.

The undisputed facts conclusively establish that there is no genuine dispute FAT's title commitment letter was insuring the older property descriptions. Because certain material facts stated herein are not disputed, and because the straightforward application of the law to those facts compels but a single result, the expeditious resolution of these issues will significantly narrow the totality of issues required to be tried to verdict in this matter.

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The grant of partial summary decision for the reasons stated herein comports with the justice, the applicable legal standards, and serves the ever-increasingly important principles of judicial economy.

UNDISPUTED FACTS

1. My name is Justin K. Holder and I am 18 years of age having personal knowledge of the acts set forth herein and am competent to testify.
2. ***Exhibit 1 - Hutzell Deed*** (the "Hutzell Deed") is a true and accurate copy of a deed recorded at Liber 408 folio 137 among the land records of Washington County, Maryland.
3. ***Exhibit 2 - Title Insurance Commitment OT-13228*** (the "title commitment") is a true and accurate copy of a document contained in the Maryland Insurance Commission file for complaint 2022 -06–018.
4. ***Exhibit 3 - Eddies Deed*** (Uncle "Eddies Deed") is a true and accurate copy of a deed recorded at Liber 6070 folio 197 among the land records of Washington County, Maryland.
5. The "title commitment" refers to the Hutzell Deed by Liber 408 folio 137 on page 1 and the 2nd page section titled "LEGAL DESCRIPTION" contains identical language, courses and distances to describe property that are contained in the Hutzell Deed.
6. Eddies Deed on folio 197 through 198 contain a description of property which states: "Said lands intended on being all of the remaining lands as conveyed by Ivan S. Hammond and Virginia Hammond, his wife to Harry C. Hutzell Jr. and Mary Jane Hutzell, his wife by deed dated May 20, 1964 and recorded at Liber 408, folio 137 among the land records of Washington County, Maryland."
7. Frederic Mark Frederick is a licensed Land Surveyor in the State of Maryland, assigned Dept. of Labor and Licensing identification number 10731 (Mr. "Frederick").

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8. Mr. Frederick was employed by myself as my agent, beginning in March of 2018 to perform survey and engineering related to the "Hutzell Deed."
9. On February 13th, 2020 I met with Expert Surveyor Frederic Frederick (Mr. "Frederick") in his office at 128 South Potomac street in Hagerstown, Maryland.
10. On February 13th, 2020 Mr. Frederick provided myself with an opinion letter discussing the title line deviations of the subject properties germane to a trespass lawsuit.
11. ***Exhibit 4 - Mr. Frederick February 13th, 2020 letter*** (the "February 13th letter") is a true and accurate copy of the title opinion letter Frederic Frederick provided to me on February 13th 2020 in his office in Hagerstown, Maryland.
12. ***Exhibit 5 - Estes Deed*** (Benjamin "Estes Deed") is a true and accurate copy of a deed recorded at Liber 902 folio 502 among the land records of Washington County, Maryland.
13. ***Exhibit 6 - NN520 Deed*** (the"NN520Deed") is a true and accurate copy of a deed recorded at Liber N.N. folio 520 among the land records of Washington County, Maryland.
14. ***Exhibit 7 - Confirmatory Deed*** (the"Confirmatory Deed") is a true and accurate copy of a deed recorded at Liber 6468 folio 345 among the land records of Washington County, Maryland.
15. The Confirmatory Deed contains a list of the predecessor deeds in the chain of title to Grantee and I have personally read all of the deeds listed on the Confirmatory Deed.
16. I have read deed dated Sept. 10th, 1832 granted from David Hess of Montgomery County, Ohio to Samuel Cost of Washington County, Maryland, recorded at Liber N. N. folio 520 among the Land Records of Washington County, Maryland, (the "NN520 Deed".)
17. I have personally confirmed that beginning with Benjamin Estes' most current title deed, all deeds in the chain of title purports to transfer the same land as the land described on title deed Recorded at Liber 960 folio 502 among the land records of

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Washington County, Maryland; excluding the land on plat 5330 recorded among the plat records of Washington County, Maryland that was granted to N/F Watkins.

18. I have personally confirmed the accuracy and validity of Mr. Frederick's February 13th letter and opinion at the first sentence of paragraph 2, which states:

> "However, when I look at the adjoining deed for Ben Estes when I trace it back the older description **(Liber 960, folio 502)** that deed runs in the reverse direction and although the bearings and distances match very well, the calls are slightly different." [Emphasis Added]

19. The 5th through 8th lines of the property description on deed NN520 are identical to 1st through 4th lines of the property described as being transferred on the Hutzell Deed/ Confirmatory Deed and the 15th through 18th lines on the Estes Deed "Tract A" (excepting the 2 degrees difference in bearing between the 1st line on the Hutzell Deed, 5th line on NN520 Deed; and 18th line on Estes Deed, (the "slightly different calls.")

20. Mr. Frederick's February 13th letter and opinion at the first sentence of paragraph 2, states:

> "That when we did that and we crossed the creek onto your side of the creek we found old evidence of a blazed tree and fence post and a fence line and it was our intent to try to follow what we believed was the intent of the old deed and thus we held those old possession lines," (the "Frederick Northern 3 lines.")

21. I have read the Estes Deed and the blazed tree followed by a fence post and fence line used to describe the *Frederick Northern 3 lines* were not utilized in deed dated June 28th 1990 granted from Ellis G. Remsburg and Alice V. Hockenberry, Trustees under a Trust Agreement dated August 20, 1984 to Grantee(s) Richard M. Jolles and Ann P. Matheson recoded at Liber 960 folio 502 among the land records of Washington County, Maryland; to describe the property being transferred.

22. ***Exhibit 8 - Deposition John Dowling*** is a true and accurate copy of the transcription of a deposition taken by Justin Holder of Licensed surveyor John Dowling employed as an expert by Respondent FAT in the trespass lawsuit.

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23. On March 18th 2022 Licensed surveyor John Dowling swears under oath:

a) "Well I mean, again, going back to the deviation, there is a deviation at the third line up from the creek. I mean I have said that consistently."

b) "I have no idea. I can't remember. I know I met with [Frederick] in my office, and I said to him what the situation was, that there was a deviation from the common lines from over 100 years ago, out based on my conversation with Mr. Frederick, that he was holding a line of possession."

c) "Yes. I mean, if you look at that, there is a deviation from Frederick's to a portion that was outside of the title lines of the original conveyance to you. And going back to the one that you had me look at, at NN520, there is a portion of land at that position, I would say at the north end of your property where the lines deviate from the tract line is going back to the 1890's, and in your case, 1832."

d) "Well, if you look at the description of 1832, it fits hand in glove with the description on the Estes side from 1893....Well over a hundred years [Q. 1832, possibly 190 years?] ...yes, it's close to 190 years."

e) "I don't know how many times I have to say it, but I clearly say that the lines to the survey, two lines above the creek deviate from the title lines. There is no question about that. {Q. I appreciate that.} I have said it more than once."

f) "My charge that I was presented with was Mr. Frederick's didn't want to stand behind his recorded survey. When I looked at it, I said I would look at the title and look at the survey, and I'd look at other instruments and I'd come up with it. What I came up is like everything, the properties run together, historically, to a certain point, and then they deviate."

g) "my basic opinion is that the lines were the same until the 1993 deviation, and the properties fit together and they deviated there," and the NN520 deed "calls to the creek."

h) "Obviously, [Frederick] signed and sealed it, and [Frederick] thinks it's correct, but [Frederick] wouldn't testify in court that it was correct. And I am willing to testify in court that it matches the title lines, **except for the one place that it deviates,**" [Emphasis Added]

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24. ***Exhibit 9 - Dowling deviation*** is a true and accurate copy of a document provided to Justin Holder from attorney representing Respondent FAT's insured Benjamin Estes in the trespass lawsuit.

25. After reviewing chains of title, survey work, documents and evidence provided to me by Frederic Frederick and interrogating John Dowling I can conclude that ***Exhibit 9 - Dowling deviation*** accurately depicts the courses and distance title line deviation described in Frederic Frederick's February 13th 2020 letter and John Dowling discussed in his March 18th 2022 deposition.

VERIFICATION

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the ***"Undisputed Facts"*** section, paragraph's 1 to 25, under the "Undisputed Facts" headings are true.

Justin K. Holder, *Pro Se*

LEGAL STANDARD - SUMMARY DECISION

COMAR Sec. 31.02.01.07.D(3): "Ruling on all procedural matters, including motions, objections, and offers of proof." As such, when the material facts are not genuinely disputed, and the application of the law to those facts requires an outcome in favor of the moving party, the MIA should, pursuant to the rule, and in service of principles of judicial economy, grant decision in favor of the moving party. To overcome a motion for summary decision, the opposing party must demonstrate a genuine dispute as to a material fact by proffering facts that would be admissible in evidence. *See Hoffman Chev. v. Wash. Co. Nat'l Sav.*, 297 Md. 691, 711-15 (1983); *Shaffer v. Lohr*, 264 Md. 397, 404 (1972); *Broadfording Ch. v. Western Md. Ry.*, 262 Md. 84, 89 (1971). General allegations which do not establish admissible

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facts in detail and with precision are insufficient to prevent summary judgment. *Lynx, Inc. v. Ordnance Products*, 273 Md. 1, 7-8 (1974). *Brown v. Suburban Cadillac, Inc*., 260 Md. 251, 256-57 (1971).

LEGAL STANDARD - DUTY TO DEFEND

The most current Maryland authority in an insurers' duty to defend is stated in *CHICAGO TITLE INSURANCE v. Jen*, 245 A.3d 150, 249 Md. App. 246 (Ct. Spec. App. 2021):

> "Maryland law is well settled that the insurer owes a duty to the insured to defend if there is a potentiality that a claim could be covered by the policy. *Brohawn v. Transamerica Ins. Co.,* 276 Md. 396, 407-08, 347 A.2d 842 (1975). The mere potentiality that a pleading might be covered can trigger the duty to defend by the insurer. *Laws. Title Ins. Corp. v. Knopf,* 109 Md. App. 134, 144, 674 A.2d 65 (1996). While 'an insured cannot assert a frivolous defense merely to establish a duty to defend on the part of his insurer,' the duty to defend is broader than the duty to indemnify. *Walk v. Hartford Cas. Ins. Co.,* 382 Md. 1, 15, 852 A.2d 98 (2004); *Aetna Cas. & Sur. Co. v. Cochran,* 337 Md. 98, 111-12, 651 A.2d 859 (1995). Additionally, '**[a]n insured may rely on extrinsic evidence where the underlying complaint `neither conclusively establishes nor negates a potentiality of coverage.**'" *Walk, supra,* 382 Md. at 16, 852 A.2d 98 (quoting *Cochran, supra,* 337 Md. at 108, 651 A.2d 859). Notably, '[i]f there is **any doubt as to whether there is a duty to defend, it is resolved in favor of the insured**.' *Id*." (Emphasis Added)

ARGUMENT - RESPONDENTS TITLE COMMITMENT INCLUDED THE TITLE LINE DEVIATION

There is no genuine dispute of fact that:

1. FAT was insuring all the property described in the Hutzell Deed and Confirmatory Deed by its title commitment letter;

2. The new property description described as the *Frederick Northern 3 lines* used monuments invented by Frederic Frederick along what he claimed was a "possession fence;"

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3. The "possession fence' was entirely included in the Hutzell Deed property and its alleged removal by Justin Holder was a material fact in the *Estes v Holder* trespass lawsuit;

4. FAT funded the prosecution of the *Estes v Holder* trespass lawsuit claiming the *Frederick Northern 3 lines* were the title lines against the interest of its insured complainants, employing John Dowling as expert.

Since there is no genuine dispute as to the land FAT was insuring, summary decision as to this material fact would eliminate the need for testimony and discovery related to land and title issues. This fact is germane to the merits of Complainants' allegations relative to FAT's duty to defend as "extrinsic evidence where the underlying complaint `neither conclusively establishes nor negates a potentiality of coverage'" *Walk, supra.* Establishing the aforementioned fact does not preclude FAT's defense to the allegations insomuch FAT's defense does not dispute the title line deviation discussed under oath by their own expert John Dowling.

WHEREFORE, the Complainant request summary decision that the property subject to the *Estes v Holder* lawsuit Respondent First American Title declined coverage thereof was included in the property description included in the First American Title Commitment letter 13228, included in the file for the instant complaint.

Respectfully submitted,

Justin K. Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, Maryland 21782
(240) 356-2008

Justin K. Holder

Pro se Litigator

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Sharpsburg, MD 21782
t: (240) 356-2008
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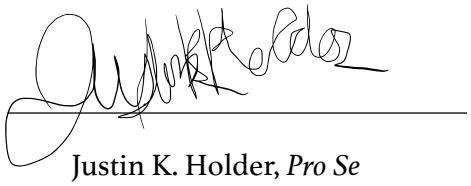
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of January, 2023, a copy of the foregoing Motion for Summary Decision was served via the Electronic Mail to:

Wes Reichart, Esq. [Wes.Reichart@us.dlapiper.com]

Robert Kline, Esq. [klinelawgroupllc@gmail.com]

Deena Holder, *Pro Se* [deenay725@yahoo.com].



Justin K. Holder, *Pro Se*

Justin K. Holder

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First American Title™	Title Insurance Commitment
	ISSUED BY **First American Title Insurance Company**
Schedule A	Commitment Number OT-13228

File No. **OT-13228 AH**

1. Effective Date: **March 08, 2018**

2. Policy (or Policies) to be issued: AMOUNT

   a. **Owner's Policy** **$90,000.00**

   ☒ ALTA Owner's (6-17-06)

   ☐ ALTA Homeowner's (Rev. 2-3-10)

   (The Company's maximum dollar of liability for those covered risks in Paragraph 16, 18, 19, and 21 of the EAGLE Protection Owner's Policy to be issued herein are attached hereto as an Exhibit)

   Proposed Insured: **End Of Chapline, LLC**

   b. **Loan Policy**

   ☐ ALTA Loan Policy (6-17-06)

   ☐ ALTA Expanded Coverage Residential Loan (Rev. 7-26-10)

   Proposed Insured:

3. The estate or interest in the land described or referred to in this Commitment and covered herein is fee simple and title to the estate in said land is at the effective date hereof vested in:

   Harry C. Hutzell, Jr. and Mary Jan Hutzell

Title acquired by: Deed from Ivan S. Hammond and Virginia Hammond, dated May 20, 1964, and recorded May 20, 1964, in the Land Records for the County of Washington, in Liber 408, at Folio 137.

4. The land referred to in this Commitment is described in the legal description shown on Schedule A (Continued).

OLDE TOWNE TITLE, INC.
Agency Name

By: _____
Authorized Countersignature

First American Title™	Title Insurance Commitment
	ISSUED BY **First American Title Insurance Company**
Schedule A (Continued)	Commitment Number OT-13228

File No. **OT-13228 AH**

LEGAL DESCRIPTION

All that tract or parcel of ground, together with the improvements thereon, situate near the town of Keedysville Washington County, Maryland:

Beginning for the outlines thereof at a planted stone standing near and in a Northerly direction from the West end of the Washington County Railroad bridge across the Little Antietam Creek, which said stream passes through the lands of Jacob Keedy into the lands of Elias Snively, and running thence down the said Creek North 22 degrees East 17 perches, North 31 degrees East 9 perches, North 10 ½ degrees East 11 ½ perches, North 19 degrees West 5 ½ perches to a planted stone; North 7 ½ degrees East 5 perches, North 74 degrees West 3 perches, South 83 ½ degrees West 2 perches, South 60 ¼ degrees West 2 perches, South 34 ¾ degrees West 4 perches, South 29 degrees West 13 perches, South 74 degrees West 6 perches, North 53 ½ degrees West 7 perches to a stone; North 13 degrees East 9 perches to a stone, North 54 degrees West 10 perches, North 20 degrees West 3 perches, North 80 degrees West 2 8/10 perches, South 13 ¾ degrees West until it intersects the outlines of the Washington County Railroad; thence bounding on the outlines of said railroad to the place of beginning; containing 3 ¾ acres and 36 perches of land, more or less;

RESERVING and EXCEPTING from this conveyance all of that portion of said land containing 80 perches, more or less conveyed by David Kretzer and wife to James Baxter, by Deed recorded in Liber No. W. Mck. K No. 6, Folio 435, one of the Land Records of Washington County, Maryland.

The improvements thereon being known as 28 Antietam Drive, Keedysville, Maryland, 21756.

File #OT-13228

Tax ID #[redacted]

502

DELIVERED JUL 3 1990

After recordation please deliver to:
Western Maryland Title Services, Inc.
125 W Washington Street
Hagerstown, Maryland 21740

A 02
DEED 24.00
RECTAX 836.00
TRTAX 800.00
POSTGE .50
AMT 1660.50

June 29, 1990
Received for Record
at 11:12 o'clock
Liber 960, fo 502 6-29A11:12

THIS DEED, Made this 28th day of June, 1990, by Ellis G. Remsburg and Alice V. Hockenberry, Trustees under a Trust Agreement dated August 20, 1984, hereinafter referred to as Grantors.

WITNESSETH: That for and in consideration of the sum of One Hundred Ninety Thousand ($190,000.00) DOLLARS, cash in hand paid, and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Grantors do hereby grant and convey unto Richard M. Jolles and Ann P. Matheson, his wife, as tenants by the entirety, all those lots or parcels of land, together with the improvements thereon, and all the rights, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining, being more particularly described as follows:

PARCEL NO. 1: All the following described parcel of land, situate in the Keedysville Election District, Washington County, Maryland, and being more particularly described as follows:

Tract A: Beginning for the outlines of the same at a stone planted in the road leading from Keedysville to Snavely's Old Church, it being also the beginning of a deed from William H. Spielman to Grant Wyand dated February 24, 1888 and recorded in Liber 91, folio 452, one of the Land Records of Washington County, Maryland, and running thence with said deed North 3 degrees West 19 perches to a stone; thence North 78 1/2 degrees West 21 3/4 perches to a stone; thence North 73 1/2 degrees West 10 1/2 perches to a stone; thence North 54 1/2 degrees West 11 3/4 perches; thence North 76 degrees West 17 1/4 perches; thence North 45 1/2 degrees West 10 1/4 perches to a stone; thence North 65 degrees West 7.6 perches to an alley; thence with said alley South 57 degrees West 18 perches; thence South 13 3/4 degrees East 7.9 perches to the lands now or formerly of David H. Wyand; thence with same, South 6 1/2 degrees West 21.4 perches; thence South 48 degrees East 4.7 perches to a stone; thence North 48 degrees East 6 perches; thence South 80 degrees East 7 1/4 perches to the end of the fifth line of a deed from Henry H. Keedy and wife to Grant Wyand dated March 31, 1890 and recorded in Liber 94, folio 638, another of said Land Records; and running thence with said deed crossing "Little Antietam", South 24 degrees West 4 3/4 perches to a stone; thence South 19 degrees East 5 1/2 perches; thence South 10 1/2 degrees West 11 1/2 perches; thence South 31 degrees West 9 perches, thence South 20 degrees West 17 perches; thence North 77 degrees East 6 1/2 perches; thence North 24 degrees East 14 perches to a stake on the east bank of the creek; thence South 50 degrees East 9 perches to a stone at the south end of a post and rail fence; thence with said fence North 39 degrees East 36.2 perches to a

Recorded By
Western Maryland Title Services, Inc.
Document No. 1 of 2

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 960, p. 0502, MSA_CE18_910. Date available 09/28/2005. Printed 06/08/2022.

VALID ONLY WITH IMPRESSED SEAL
I HEREBY CERTIFY, that this is a true copy of one of the records of Washington County, Maryland, having been recorded in Land Records L 960/F 502-
in the Office of the Clerk of the Circuit Court. In Testimony whereof I hereunto subscribe my name and affix the Seal of the Circuit Court For Washington County, Maryland.
KEVIN R. TUCKER, CLERK
6/08/2022
DATE ISSUED

stone near a cluster of sycamore trees near the south bank of the Spring Branch; then leaving the outlines of said deed from the said Henry H. Keedy and wife to the said Grant Wyand and running up said Branch North 87 degrees East 12.2 perches; thence North 60 1/2 degrees East 8 1/4 perches; thence leaving said Branch South 52 3/4 degrees East 5 perches to a stone; thence South 26 1/2 degrees West 3.9 perches to a stone near the head of a large spring, thence South 8 degrees East 13.3 perches to the end of a stone fence; thence South 44 1/2 degrees East 7 perches to a stone; thence North 60 1/2 degrees East 28 perches to the place of beginning, containing 20 acres of land, more or less;

BEING all that tract of land described and conveyed as Parcel No. 1 in a deed from Frisby M. Clopper, widower, to Harry Remsburg and Olive C. Remsburg, his wife, dated September 24, 1925 and recorded in Liber 172, folio 516 among the Land Records of Washington County, Maryland, the said Harry Remsburg having died on August 4, 1956 leaving title to the property vested in Olive C. Remsburg.

SAVING AND EXCEPTING thereout and therefrom, the following:

All that parcel of land recited to contain 1.19 acres of land, more or less, described and conveyed in a deed from Olive C. Remsburg, widow, to The Mayor and Council of Keedysville, Maryland dated June 4, 1959 and recorded in Liber 348, folio 8 among the Land Records of Washington County, Maryland.

Tract B: Being part of a tract called "The Resurvey on Feelfoot Enlarged", beginning for the same at a plated stone standing on the west side of the creek and at the end of the eighth or North 50 degrees West 73 perches line of a deed from Herman N. Keedy to Jacob R. Hoover dated April 2, 1894 and running thence with the ninth and tenth lines of said deed South 33 1/2 degrees West 3 perches to a stone, South 22 1/2 degrees West 17 perches to a stone planted near the west end of a stone abutment; thence leaving the outlines of the aforesaid deed and running along the east margin of the Washington County Branch of the Baltimore and Ohio Railroad South 35 1/2 degrees East 17 perches to a post, then leaving the railroad North 8 1/2 degrees East 5 1/4 peches to a stone; North 26 1/2 degrees East 19.1 perches to a stone in the aforesaid eighth line, then with said line North 50 degrees West 14 3/4 perches to the place of beginning, containing 1 3/4 acres and 18 perches of land, more or less;

BEING all that tract of land described and conveyed as Parcel No. 2 in a deed from Frisby M. Clopper, widower, to Harry Remsburg and Olive C. Remsburg, his wife, dated September 24, 1925 and recorded in Liber 172, folio 516 among the Land Records of Washington County, Maryland, the said Harry Remsburg having died on August 4, 1956 leaving title to the property vested in Olive C. Remsburg.

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 960, p. 0503, MSA_CE18_910. Date available 09/28/2005. Printed 06/08/2022.

PARCEL NO. 2: All that tract or parcel of land situate near the eastern limits of Keedysville, Washington County, Maryland, and described as follows: Beginning at a point on the south margin of an alley running along the rear of the lots heretofore sold off of the entire parcel of which this conveyance is a part and said point being also at the end of the first line of a deed from Albert D. Baker to William C. Geeting dated December 4, 1909 and recorded in Liber 174, folio 499, one of the Land Records of Washington County, and running thence with the second and third line of the said Geeting deed South 44 degrees East 60 feet, then South 46 1/2 degrees West 150 feet to the east margin of the public road leading from Keedysville to Mount Hebron Church; thence with the first line of a deed from Aaron Cost and wife to Aaron F. Baker dated March 22, 1872 and recorded in Liber W.McK.K. 4, folio 571, one of the Land Records of said Washington County, and South 63 degrees East 46 1/7 perches to the end of the said first line of said Cost deed, thence with the second and part of the third line of said Cost deed North 13 degrees East 45 1/2 perches to a stone, then North 70 degrees West 19 1/3 perches to the end of the second line of a deed from Albert D. Baker to Jacob H. Naille dated May 16, 11921 and recorded in Liber 180, folio 623, one of the Land Records of said Washington County, thence with said second line of said Naille deed reversed and with the south margin of the aforementioned alley and by a straight line to the place of beginning;

BEING all and the same real estate described and conveyed in a deed from Grace I. Dean, unmarried, and Esta C. Clopper, widow, to Harry Remsburg and Olive C. Remsburg, his wife, dated September 4, 1928 and recorded in Liber 181, folio 197 among the Land Records of Washington County, Maryland, the said Harry Remsburg having died on August 4, 1956 leaving title to the property vested in Olive C. Remsburg.

SAVING AND EXCEPTING thereout and therefrom, the following:

1. All that parcel recited to contain 0.27 acres of land, more or less, described and conveyed in a deed from Olive C. Remsburg, widow, to Arthur G. Norris and Pauline G. Norris, his wife, dated October 14, 1971 and recorded in Liber 532, folio 274 among the Land Records of Washington County, Maryland; and

2. All that lot or parcel recited to contain 0.43 acres, more or less, described and conveyed in a deed from Olive C. Remsburg, widow, to Franklin J. Shifflet and Constance J. Shifflett, his wife, dated October 14, 1971 and recorded in Liber 541, folio 818 among the Land Records of Washington County, Maryland.

BEING all of Parcel No. 1, Tract A and Tract B, and Parcel No. 2 described and conveyed in the Deed dated August 20, 1984 from Olive C. Remsburg to Ellis G. Remsburg and Alice V. Hockenberry, as Trustees under a Trust Agreement dated August 20, 1984, recorded in Liber 769, folio 199 among the Land Records of Washington County, Maryland.

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 960, p. 0504, MSA_CE18_910. Date available 09/28/2005. Printed 06/08/2022.

The above described property is conveyed subject to all conditions, restrictions, easements and rights of way of record applicable thereto.

And the said Grantors do hereby covenant that they will warrant specially the property hereby conveyed, except as to the aforementioned conditions, restrictions, easements and rights of way of record, and that they will execute such other and further assurances as may be requisite and necessary.

WITNESS the hands and seals of the said Grantors.

WITNESS:

Ellis G. Remsburg (SEAL)
Ellis G. Remsburg, Trustee
under a Trust Agreement dated
August 20, 1984

Alice V. Hockenberry (SEAL)
Alice V. Hockenberry, Trustee
under a Trust Agreement dated
August 20, 1984

STATE OF MARYLAND, COUNTY OF WASHINGTON, To-Wit:

I HEREBY CERTIFY, That on this 28th day of June, 1990, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared ELLIS G. REMSBURG and ALICE V. HOCKENBERRY, Trustees under a Trust Agreement dated August 20, 1984, and each acknowledged the aforegoing deed to be their voluntary act and deed and that the actual consideration paid or to be paid for the aforegoing conveyance, including the amount of any mortgage or deed of trust assumed by the Grantee, is in the sum total of One Hundred Ninety Thousand ($190,000.00) Dollars.

WITNESS my hand and Official Notarial Seal.

Notary Public

My Commission Expires: July 1, 1990

THIS IS TO CERTIFY, That the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Kent N. Oliver, Attorney

MAIL TO: Richard M. Jolles
33 Mt. Hebron Rd.
Keedysville MD 21756

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 960, p. 0505, MSA_CE18_910. Date available 09/28/2005. Printed 06/08/2022.

506

Pursuant to the provisions of Article-Tax-Property Section 13-203(b), the undersigned Grantees hereby make oath that the residence on the property described in the Deed to which this Affidavit is attached will be occupied by the Grantees.

Richard M. Jolles
Richard M. Jolles

Ann P. Matheson
Ann P. Matheson

Subscribed and Sworn to this 28th day of June, 1990.

Notary Public

MY COM EXP: July 1, 1990

Letter of Instruction 20.6725
AGRICULTURE TAX $ 1702 on 8.486 AC
ACREAGE
CLERK Nadine L. Shupp

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Washington County
By Linda L. Ross 6/29/90
Date

TAXES PAID June 29, 1990
TODD L. HERSHEY, TREASURER LJS

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 960, p. 0506, MSA_CE18_910. Date available 09/28/2005. Printed 06/08/2022.

Maryland
Department of the Environment

Wes Moore, Governor
Aruna Miller, Lt. Governor

Serena McIlwain, Secretary Designate
Suzanne E. Dorsey, Deputy Secretary

January 31, 2023

Mr. Justin Holder
308 West Chapline Street
Sharpsburg, Maryland 21782

Re: Certification of Records – Retrieved Via Public Information Act Request
PIA Tracking Number – 2022-03552

Dear Mr. Holder

The Maryland Department of the Environment, Water Compliance Program in the Water & Science Administration received your request for certified copies of documents received in response to the above-mentioned Public Information Act request. Enclosed is the certification and requested records. The hard copies will be sent via UPS and scans have been emailed via sharpsburgmanagement@gmail.com along with this letter. If you have any questions, please contact me at kathy.mohan@maryland.gov or at 410-537-3529.

Sincerely,

Kathy Mohan
PIA Liaison
Water & Science Administration

Enclosures:
-Certification of Records
-Complaint Dated 1/1/2018 To: The Maryland Department of the Environment From: The Boonesboro-Keedysville Water Systems
-Boonsboro Keedysville Map Source Area Schematic: Keedysville Site Dated: 09/23/2015
-Boonsboro Keedysville Map Source Area Schematic Well 8 Site Dated: 09/23/2015
-SDAT Map
-Google Earth Map Dated: 9/10/2015
-Google Earth Map Showing 22 Mt Hebron Road Dated: 9/10/2015
-SDAT Information for Address Hebron Road
-SDAT Information for Address 22 MT Hebron Road

CERTIFICATION OF RECORDS IN ACCORDANC E WITH
COURTS AND JUDICIAL PROCEEDINGS ARTICLE §10-204 AND
MARYLAND RULE 5-902

I am the Public Information Act Liaison for the Water & Science Administration and Custodian of Records for the Maryland Department of the Environment. I am personally familiar with the Department's record keeping practices for files that are made and kept in the course of the Department's regularly conducted business activities for compliance with State environmental regulatory and compliance laws. I hereby certify that the documents concerning (1) Complaint Dated 1/1/2018 To: The Maryland Department of the Environment From: The Boonesboro-Keedysville Water Systems (2) Boonsboro Keedysville Map Source Area Schematic: Keedysville Site Dated: 09/23/2015 (3) Boonsboro Keedysville Map Source Area Schematic Well 8 Site Dated: 09/23/2015 (4) SDAT Map (5) Google Earth Map Dated: 9/10/2015 (6) Google Earth Map Showing 22 Mt Hebron Road Dated: 9/10/2015 (7) SDAT Information for Address Hebron Road (8) SDAT Information for Address 22 MT Hebron Road are enclosed on this mailing on January 31, 2023, are official business public records authorized by law to be maintained at the Maryland Department of the Environment and are certified as true and accurate original records filed at the Department.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing are true.

1-31-23
DATE

Kathy Mohan
Custodian of Records
Water & Science Administration
Maryland Department of the Environment

021-0002 SAID / CHRIS
Boonsboro - Keedysville CWS PL. ADVISE
JG

COMPLAINT

TO: THE MARYLAND DEPARTMENT OF THE ENVIRONMENT (MDE)

REGARDING: THE BOONSBORO-KEEDYSVILLE WATER SYSTEM, generally,
THE KEEDYSVILLE SPRING, specifically.

Date: 01/01/2018

Whereas, The Towns of Boonsboro and Keedysville, Washington County, MD, have made an agreement whereby the Town of Keedysville proyides water into the Boonsboro-Keedysville Water System (from the Keedysville Spring) in exchange for the Town of Boonsboro operating and maintaining the water system;

Whereas, both Keedysville and Boonsboro, Washington County, MD exist on a shared water system and both maintain a shared responsibility of source water protection;

Whereas, the Keedysville Spring located just east of the Town of Keedysville has an annualized water appropriation permit for 220,000 gpd;

Whereas, the (Draft) 2009 Comprehensive Plan, Town of Keedysville, Washington County, MD, Chapter 9, Water Resources Element states that, at least as of 2010, MDE has determined that the Town can only withdraw a limited amount from the spring or approximately 100 taps for new development due to drought conditions, the impact on reliability, and the reserve from the aquifer for other users in the zone of influence;

Whereas, the (Draft) 2009 Comprehensive Plan, Town of Keedysville, Washington County, MD, Chapter 9, Water Resources Element states that since water is shared by both Towns, Boonsboro could share any excess with Keedysville and vice versa provided both Towns agree and the existing water appropriation permit limits are not exceeded;

Whereas, the (Draft) 2009 Comprehensive Plan, Town of Keedysville, Washington County, MD, Chapter 9, Water Resources Element states that given the projected water demand, as of 2009, the available water supply will be exhausted by year 2020 unless additional resources can be found or efforts to reduce unaccounted for water are successful in making up the difference;

Whereas, in 2005, MDE developed a Source Water Assessment Program (SWAP) for the Boonsboro Keedysville Water System (hereinafter referred to as "System") and found that the System was and remains served by two active wells (Graystone Well 8 and the Shafer Park Well) and two springs (the Warrenfeltz and Keedysville Springs);

Whereas, the System is served by the following sources:

1) Warrenfeltz Spring - This spring, which has an MDE annualized water appropriation permit for 130,000 gallons per day (gpd);
2) Keedysville Spring - This spring, which, as stated above, has an MDE approved annualized water appropriation permit for 220,000 gpd;
3) Graystone Well 8 & Shafer Park Well - the two wells have a combined MDE approved annualized water appropriation permit for 332,000 gpd;
4) Crestview Well 9 - This well, non-utilized, located in Boonsboro, has an Annualized water appropriation permit for 1,000 gpd;

total- 682,000

2016/2017 Av use 356,281 = 52% gpa

Whereas, the Boonsboro, MD 2009 Comprehensive Plan states that, as of 2009, the maximum permitted capacity of the regional water system is approximately 683,000 gallons per day (gpd);

Whereas, the Boonsboro, MD 2009 Comprehensive Plan states that, as of 2006, 12 years ago, Boonsboro withdrew an average of approximately 235,000 gpd from its three sources, while Keedysville withdrew an average of approximately 218,000 gpd from its spring—a total system demand of 453,000 gpd;

Whereas, the 2009 Washington County, MD Water and Sewerage Plan states that to address the impact of growth on the water supply, the Boonsboro Utilities Commission adopted a policy requiring each developer (except minor subdivisions of 5 or less units) to provide a minimum new water supply of 108,800 gpd (70 gpm) in the form of a new well to be connected to the existing distribution system;

Whereas, in the years between 2009 and the present there has been rapid development in both Keedysville and Boonsboro, MD, including but not limited to, at least 2 additional housing developments (Sycamore Run, approximately 51 homesites, and Stonecrest, approximately 21 homesites), other new homes, a development of a small shopping center including a fast food restaurant, the opening of a large new pet store in an existing shopping plaza, a major newly renovated and largely expanded gas station/restaurant, and rapid influx of population;

Whereas, construction is under way on a new $60 million to $70 million development that will bring a mix of homes and businesses to Boonsboro. The Preserve at Fox Gap along Alternate U.S. 40 will include the construction of a 16,000-to-20,000-square-foot shopping center, with

Substantial ↓ in leaks?

RECEIVED JAN - 5 2018

five retail shops on 16 acres with plans for the area behind the shopping center to be developed into 75 single-family homes and 70 to 80 villa-style townhomes;

Whereas, to the undersigned's knowledge, there have been no additional MDE water appropriations permits since the drafting of the 2009 Keedysville Comprehensive Plan, The 2009 Boonsboro Comprehensive Plan. The 2009 Washington County Water and Sewerage Plan, or the 2013 Source Water Protection Plan Benefiting the Boonsboro-Keedysville Water System;

Whereas, to the undersigned's knowledge, there have been no changes to the existing MDE water appropriations permits since the drafting of the 2009 Keedysville Comprehensive Plan, The 2009 Boonsboro Comprehensive Plan, The 2009 Washington County Water and Sewerage Plan, or the 2013 Source Water Protection Plan Benefiting the Boonsboro-Keedysville Water System;

Whereas, to the undersigned's knowledge, there has been no new provision of a the seemingly required minimum new water supply of 108,800 gpd (70 gpm) in the form of a new well to be connected to the existing distribution system since the drafting of the 2009 Keedysville Comprehensive Plan, The 2009 Boonsboro Comprehensive Plan, The 2009 Washington County Water and Sewerage Plan, or the 2013 Source Water Protection Plan Benefiting the Boonsboro-Keedysville Water System;

Whereas, the Boonsboro-Keedysville Water System draws approximately 190,000 gpd, from the Keedysville Spring, rapidly approaching the MDE appropriation limit for the Keedysville Spring of 220,000 gpd;

Whereas, there has been considerable visible change in the flow of the Keedysville Spring water outflow through and near the undersigned's land in the absence of formal drought conditions;

Whereas, there has been significant recent physical efforts by the The Boonsboro-Keedysville Water System authorities to replace and/or rework the dam/embankments to the Keedysville Spring; such efforts have had significant impact to reduce the flow in the stream that exits the Keedysville Spring.

Whereas, there may be significant environmental impact by the current and potential future changes to the the Keedysville Spring water flow;

Now, therefore, the undersigned formally requests that the Maryland Department of the Environment formally investigate the Boonsboro-Keedysville Water System to insure compliance with any and all water appropriations permits and developmental restrictions to insure that the existing water supply is not being overused or stressed beyond its limits.

Furthermore, the undersigned formally requests that there be no additional increases to the Keedysville Spring water appropriations permit beyond its existing limits, as any such increase may cause serious environmental changes as well as affect downstream riparian rights of affected

(1) is spring really water body viewed?

(2) no change in raw water quality that MDE has seen?

(3) raw turbidity monitored continuously

JAN - 5 2016

landowners, including the undersigned. Hand in hand to this request is that all recent changes to the Keedysville Spring's outflow be studied for environmental and riparian rights impact and that any such impacts be mitigated and/or reversed.

Additionally, the undersigned formally requests that the Maryland Department of the Environment act with haste and without undue delay, as environmental changes appear to be happening in real time and riparian rights are being affected. The undersigned requests that any additional changes to the water flow from the Keedysville Spring be enjoined, and only allowed by formal authorization of the Maryland Department of the Environment after thorough environmental and legal implications are formally studied.

Respectfully Submitted.

Benjamin N. Estes
Keedysville, MD resident, affected landowner

Lisa S. Estes
Keedysville, MD resident, affected landowner

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES **Plaintiff** **v.** **JUSTIN HOLDER, *et al*.** **Defendants**	**Case No. C-21-CV-20-000430**

NOTICE OF VIDEOTAPED ORAL DEPOSITION *DUCES TECUM* OF CORPORATE REPRESENTATIVE FOR THE MARYLAND DEPARTMENT OF THE ENVIRONMENT

You are hereby notified that Defendant, Justin Holder, in proper person, pursuant to the Maryland Rules of Procedure § 2-412 and § 2-416, will take the deposition upon oral examination, for use in discovery and at trial, of the following persons on the date and at the time indicated below before a person duly authorized to administer an oath under Maryland law to be recorded stenographically/audio/videotape.

The deposition will be recorded via stenographic, audio, and/or videotaped means for the purpose of discovery and/or used as evidence and/or any other purposes permitted by the Maryland Rules of Civil Procedure, including use at trial, and will continue day to day until completed. Non - Party **MARYLAND DEPARTMENT OF THE ENVIRONMENT**

shall produce a corporate representative(s) with the knowledge and ability to testify regarding the topics described in the attached "Schedule A - Schedule of Documents."

In addition, the Deponent shall bring to the deposition the documents/things listed in the "Schedule A - Schedule of Documents." You are advised that you must designate one or more officers, directors, managing agents, or other persons who will testify on your behalf regarding the matters listed in "Schedule A - Schedule of Documents" which are known or reasonably available to **MARYLAND DEPARTMENT OF THE ENVIRONMENT**

SCHEDULE A - SCHEDULE OF DOCUMENTS:

1. Any correspondence, email, text, social media, letters; sent or received that relate to the “properties” or parties in this action.
2. Any reports, investigatory files, citations, fines, demand letters, notice of violation that relate to the “properties” or parties in this action.
3. Any documents that give Maryland Department of the Environment or the Public; Incorporeal, appurtenant rights, easement in gross of the Public; to the waters of the Little Antietam Creek, its tributaries and adjacent non-tidal wetlands in Keedysville, Maryland.
4. Any documents related to well head protection, ground water pollution, storm water management violations, discharge of waste and sewage into the tributaries of the navigable waters of the United States or Fecal Coliform pollution levels in the Little Antietam Creek.
5. Any Communications with the United States Enviromental Protection Agency, other State of Maryland Agencies or other political sub-divisions related to the “properties” or parties in this action.
6. Any documents, records or correspondence related to bridge abutment removal in the Little Antietam Creek in Keedysville, Maryland. Any documents, records or correspondence related to bridge abutment removal in the Little Antietam Creek in Keedysville, Maryland regarding I.C.C. Docket AB 19 Sub 20 Right of Way abandonment of the Hagerstown branch of the B and O Railroad. The abandonment was approved by the I.C.C on June 18th, 1978 and consummated by the railroad on

November 15th, 1978. The permits to disturb the stream may have been issued anytime after the abandonment.

Respectfully submitted,

Justin Holder, Pro Se
308 West Chapline St.
Sharpsburg, MD 21782
jholder2004@gmail.com
(240) 356 - 2008

Certificate of Service

I hereby certify that on this 15th day of September, 2021, the foregoing Certificate Regarding discovery was filed via MDEC and thus served electronically upon all counsel of record, and the foregoing paper Subpoena *Duces Tecum* to **Maryland Department of the Environment** and Certificate Regarding Discovery was sent via Electronic Mail, including:

Aaron Neal, Esq.,
Robert Kline, Esq.,
Matt Ruble, Esq.,
Talley Kovacs, Esq.,
Justin Holder, Pro Se.

Justin K. Holder, Pro Se

CIRCUIT COURT FOR WASHINGTON COUNTY
24 Summit Avenue, Hagerstown, Maryland 21740
Phone: (301) 733-8660 Maryland Relay call: 711
Toll-free (in Maryland) 800-937-2062

Case. No. C-21-CV-20-000430

STATE OF MARYLAND
or Benjamin Estes — Plaintiff
vs.
Justin Holder et al — Defendant

TO: Maryland Department of Environment
Name
1800 Washington Boulevard
Address 1
Address 2
Baltimore MD 21230
City, County, State, Zip

Issue Date: 9/15/2021
Service Deadline: 60 days after the Issue Date.

SUBPOENA

You are hereby compelled to appear at a ☐ court proceeding ☒ deposition at the following location:
308 West Chapline St
Address of Court or Other Location
Sharpsburg MD 21782
City, State, Zip
On October 27th, 2021 at 9:00 ☒ a.m ☐ p.m.
Date Time

☒ To testify in the above case, and/or
☒ To produce the following documents, items, and information, not privileged: In Notice Schedule A
☒ To produce, permit inspection and copying of the following documents or other tangible items: In Notice Schedule A

Justin Holder requested issuance of this subpoena. Questions should be referred to:
Requested By
Justin Holder
Name
(240) 356-2008
Phone
308 W. Chapline St
Address
Sharpsburg MD 21782
City, State, Zip

Special Message: Zoom Link included in Notice

☐ If this subpoena compels the production of financial information, or information derived from financial records, the requestor of this subpoena hereby certifies having taken all necessary steps to comply with the requirements of Md. Code Ann., Financial Institutions § 1-304 and any other applicable law.

☐ If this subpoena compels the production of medical records, the requestor of this subpoena hereby certifies having taken all necessary steps to comply with the requirements of Md. Code Ann., Health-General § 4-306 and any other applicable law.

☐ Foreign Subpoena and/or Undertaking form are attached and are incorporated by reference and are made part of this subpoena

Kevin Tucker, Clerk
Circuit Court for Washington County

NOTICE:
1. YOU ARE LIABLE TO BODY ATTACHMENT AND/OR FINE FOR FAILURE TO OBEY THIS SUBPOENA.
2. This subpoena is effective for the date and time stated and any subsequent dates as directed by the court.
3. If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate one or more persons who will testify on its behalf, pursuant to Rule 2-412(d).
4. Serving or attempting to serve a subpoena more than 60 days after the date of issuance is prohibited.

RETURN OF SERVICE

I certify that I delivered the original of this Subpoena to the following person(s): _____
on the following date: _____ by the following method (specified as required by Rule 2-126):

_____
Signature

_____
Printed Name

CC-004 (Rev. 07/2018)

February 5, 2018

The monthly meeting of the Keedysville Water Commission was called to order at 8:30pm, with the following members present: Commission Chairman Barry Levey, Commission Members Ken Lord, Gina Ellis, Judy Kerns and David Bajuscak and Town Administrator Rick Bishop

Minutes for January, 2018 were read and approved.

General Fund Report was $104,954.01.

Mr. Levey noted that the tank insulation design and MDE requirements are being processed and the project will go to bid soon.

Mr. Levey noted the increase in water rates that began with water used as of January 1, 2018.

Mr. Levey noted the need to order 100 meters to replace the remaining touch pad meters so that the entire town will have radio read meters.

Mr. Levey noted the resident complaint filed with MDE questioning the adequacy of the Town's water supply to sustain growth. The Town is in the process of responding.

Mr. Levey noted the water shut off that will need to occur on a portion of North Main St. to replace a shut off valve.

Mr. Levey noted the repairs done by the Boonsboro staff to thaw water meter crocks during the recent extremely cold weather and several related repairs.

Mr. Bishop noted the Water Advisory Board meeting scheduled for February 22.

Mr. Levey noted the needed pump repairs at the booster pump station.

Meeting adjourned at 8:43pm.

Submitted,
Richard Bishop
Town Administrator

Maryland
Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Horacio Tablada, Secretary
Suzanne E. Dorsey, Deputy Secretary

1800 Washington Boulevard | Baltimore, MD 21230 | 1-800-633-6101 | 410-537-3000 | TTY Users 1-800-735-2258
www.mde.maryland.gov

December 12, 2022

Mr. Justin Holder
308 West Chapline Street
Sharpsburg, MD 21782

RE: Tracking Number: 2022-03552
Request Received November 16, 2022
A Copy of the Correspondence from Benjamin Estes in the Keedysville Spring File

Dear Mr. Holder:

The Maryland Department of the Environment (MDE) received your recent request for information under the Public Information Act (PIA).

The Water & Science Administration has information and data available on the site(s) listed above. Please contact me to schedule an appointment for file review or to arrange for photocopies of all releasable materials. You will be invoiced for all applicable search, review, duplication and postage charges. It is requested that you make arrangements to review available files within 30 days of receipt of this letter. After 30 days your request will be closed and it will be necessary to file a new request.

Please note that we often need up to two weeks from the time we hear from you to physically assemble the files of interest to you. You are encouraged to contact us promptly if you wish to expedite the process of obtaining copies of these materials.

When requesting information regarding this request, please cite the tracking number referenced above. If you have any questions, please contact me at kathy.mohan@maryland.gov.

Sincerely,

Kathleen Mohan

Kathleen Mohan
PIA Liaison
Water & Science Administration

Gmail Justin Holder <jholder2004@gmail.com>

202203552

Kathy Mohan -MDE- <kathy.mohan@maryland.gov> Fri, Jan 20, 2023 at 12:59 PM
To: Justin Holder <jholder2004@gmail.com>

Mr. Holder,
Please see the attached information from the Water Supply program.
Kathy

--

Kathy Mohan
PIA Liaison
Water and Science Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230
kathy.mohan@maryland.gov
(410) 537-3529
(443) 908-0159 (c)

Website | Facebook | Twitter

Click here to complete a three question customer experience survey.

2022-03552 Water Supply file.pdf
3863K

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. C-21-cv-20-000430
	:	
JUSTIN HOLDER, *et al.*	:	
	:	
Defendants.	:	

PLAINTIFF'S OPPOSITION TO DEFENDANT JUSTIN HOLDER'S MOTION TO ALTER OR AMEND INJUNCTIVE RELIEF

COMES NOW the Plaintiff, Benjamin Estes, and hereby opposes Defendant Justin Holder's Motion to Alter or Amend the injunctive relief provided for by the Court. In support thereof the Plaintiff states as follows:

Introduction

As with nearly all of Mr. Holder's filings in the present case, as well as all other cases in which he represents himself, it is most difficult, if not impossible, to understand exactly what Mr. Holder is asking for, and what grounds and authorities support his position(s). Rather than try to interpret the tea leaves of Mr. Holder's writings and hazard guesses or responses to what Mr. Holder is asking for and spend countless hours interpreting Mr. Holder's stream of consciousness writing, the Plaintiff will simply respond that he believes that the Court's decision to enjoin Mr. Holder and others from the Plaintiff's property is clearly correct. The Judgment and Opinion of the Court are well reasoned and well supported in fact and in law. The grant of injunctive relief should not be set aside, revised, altered or amended. Moreover, as with all of Mr. Holder's filings and assertions, Mr. Holder's Motion clearly mischaracterizes, misconstrues, or fabricates testimony and evidence. The Court shoudl deny his motion to alter or amend as the granting of injunctive relief is manifestly proper.

Argument

Although the Defendant's Motion in nearly incomprehensible, it appears, generally, as though he is seeking relief pursuant to Maryland Rule 2-311 and requesting the Court alter or amend its judgment granting Plaintiff injunctive relief against the Defendant under Rule 2-534 or for the Court to revise its judgment under Rule 2-535, presumably for some fraud, mistake or irregularity or for the discovery of new evidence. This, however, is where the Plaintiff's power of interpreting Mr. Holder's motion ends. As such, the Plaintiff respectfully requests that if the Court is somehow able to interpret Mr. Holder's filing and if the Court questions the appropriateness of the judgments or opinions from which Mr. Holder is seeking relief, then the Plaintiff be permitted to reserve the opportunity to respond in as much detail as the Court deems appropriate.

As for the appropriateness of the motion to alter and amend the grant of injunctive relief pursuant to Rules 2-534 and 2-535, the following arguments in opposition are offered:

A. Defendant's Motion to Alter or Amend under Rule 2-534 should be denied.

Maryland Rule 2-534 provides in pertinent part:

> In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.

There is nothing in the Court's opinion and judgment granting injunctive relief that needs to be amended or altered. Certainly, Defendant's Motion provides no persuasive arguments that the judgment and or opinion should be altered or amended. The Court's determination that Justin Holder and Deena Holder use Uncle Eddie's as an alter-ego is obvious, true, and appropriate. (Opinion, at 12, n. 3). Moreover, injunctive relief is appropriate because the

evidence clearly shows that the Plaintiff (1) has the right to relief on the merits, (2) that the balance of convenience favors the Plaintiff, (3) that Plaintiff will suffer irreparable injury if the injunction is not granted, and (4) the public interest is benefitted from the granting of injunctive relief.

B. Defendant's Motion under Rule 2-535 should be denied.

Maryland Rule 2-535 states in pertinent part:

> (a) On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534…
>
> (b) On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.
>
> (c) Newly-Discovered Evidence. On motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 2-533.

There is nothing in the Court's opinion and judgment granting injunctive relief that needs to be revised. Certainly, Defendant's Motion provides no persuasive arguments that the judgment and/or opinion should be revised. As Section (a) of Rule 2-535 states, and in the discussion of Rule 2-534, it must be that Mr. Holder is attempting to ask the Court to revise its judgment and opinion for either Fraud Mistake or Irregularity, under Section (b) or for newly discovered evidence under Section (c). These arguments fail.

First, there is no fraud, mistake, or irregularity that necessitate the invocation and exercise of the Court's revisory power. The Motion is devoid of any cogent argument warranting a revision of the Court's judgment and opinion. The evidence necessary to establish fraud, mistake, or irregularity must be clear and convincing and Maryland courts "have narrowly defined and strictly applied the terms fraud, mistake, [and] irregularity," in order to ensure

finality of judgments. *See Platt v. Platt,* 302 Md. 9, 13 (1984); *Thacker v. Hale*, 146 Md. App. 203, 217 (2002). Nothing in Mr. Holder's motion provides anything close to clear and convincing evidence of fraud, mistake, or irregularity that would necessitate a revision of the Court's holdings.

There was no irregularity in the Court's order. "When determining whether an irregularity occurred, a trial court must consider the totality of the circumstances." *Thacker*, 146 Md. App. at 219. "Furthermore, an 'irregularity' in the contemplation of Rule 2–535(b) is 'not an error, which in legal parlance, generally connotes a departure from truth or accuracy of which a [party] had notice and could have challenged,' but a nonconformity of 'process or procedure.'" *Davis v. AG of Md.*, 187 Md. App. 110, 125 (2009). "Courts, therefore, have held that if the judgment under attack was entered in conformity with the practice and procedures commonly used by the court that entered it, there is no irregularity justifying the exercise of revisory powers under Rule 2–535(b)." *De Arriz v. Klingler–De Arriz,* 179 Md. App. 458, 469 (2008) (internal quotation marks omitted); *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013). Clearly, in the current case, there are no irregularities within the Rule necessitating the revisory power of the Court.

There is no fraud necessitating any revisions to the Court's Order. "To establish fraud under Rule 2–535(b), a movant must show extrinsic fraud, not intrinsic fraud." *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008). "Fraud is extrinsic when it actually prevents an adversarial trial but is intrinsic when it is employed during the course of the hearing which provides the forum for the truth to appear, albeit, the truth was distorted by the complained of fraud." *Id.* at 73. The rationale is that "[O]nce parties have had the opportunity to present before a court a matter for investigation and determination, and once the decision has been rendered and

the litigants, if they so choose, have exhausted every means of reviewing it, the public policy of this State demands that there be an end to that litigation ... [.] This policy favoring finality and conclusiveness can be outweighed only by a showing that the jurisdiction of the court has been imposed upon, or that the prevailing party, by some extrinsic or collateral fraud, has prevented a fair submission of the controversy." *Id.* (internal quotation marks omitted); *Pelletier v. Burson*, 213 Md. App. 284, 290-91 (2013). Certainly, there has occurred no fraud within the Rule necessitating the revisory power of the Court.

Further, there is no mistake requiring the Court to revise its Order. "Under Maryland law, an enrolled judgment can be set aside for mistake or irregularity. Mistake is limited, however, to jurisdictional error, such as where the Court lacks the power to enter judgment." *Green v. Ford Motor Credit Co.,* 152 Md. App. 32, 51 (2003); *Pelletier*, 213 Md. App. at 291. Clearly there has been no "mistake" within the Rule necessitating the invocation of the revisory power of the Court.

Secondly, there is no newly discovered evidence that necessitates the invocation and exercise of the Court's revisory power. The Defendant's Motion is entirely devoid of any claim of new evidence that would necessitate a revision of the Court's judgment or opinion. Moreover, the Defendant has motioned for a new trial, and his arguments, or lack thereof, regarding the grounds for a new trial are discussed in a separate Opposition/Response to the Defendant's Motion for a New Trial.

Conclusion

For all of the foregoing reasons, the Court should deny the Defendant's Motion to Alter or Amend. The Judgment and Opinion must stand.

Respectfully submitted,

By: */s/*
Timothy F. Maloney, CPF #86060102045
Alyse L. Prawde, CPF #1412180033
Joseph Greenwald & Laake, PA
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770
(301) 220-2200 (phone)
(301) 220-1214 (fax
tmaloney@jgllaw.com
aprawde@jgllaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 21, 2023, a copy of the foregoing was served on all counsel of record and parties via MDEC.

/s/
Alyse L. Prawde

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. C-21-cv-20-000430
	:	
JUSTIN HOLDER, *et al.*	:	
	:	
Defendants.	:	

PLAINTIFF'S OPPOSITION TO DEFENDANT JUSTIN HOLDER'S MOTION TO REVISE/DISMISS IN ACCORDANCE WITH REAL PROPERTY CODE ANN. § 14-108(a)

COMES NOW the Plaintiff Benjamin Estes, and hereby opposes Defendant Justin Holder's Motion to Revise/Dismiss in Accordance with Real Property Code Ann. § 14-108(a). In support thereof, the Plaintiff states as follows:

Introduction

It is clear from reading Mr. Holder's Motion that he is either confused or is attempting to confuse. If Mr. Holder is confused, then the Court need not remedy his confusion, as the Court's findings and opinions that Mr. Holder endeavors to have revised are clearly correct and well supported in law and in fact. The Court's mastery of the issues and succinct opinions speak for themselves.

Plaintiff is unable to discern exactly what Mr. Holder is arguing in his rambling and incomprehensible motion. The Plaintiff urges the Court to see through Mr. Holder's attempts to obfuscate the issues in this case and to harass the Plaintiff through senseless argument. Inasmuch as can be understood of Mr. Holder's Motion in generalities, the Plaintiff offers the following rebuttal arguments.

Argument

Section I Paragraph A of the Motion, which is mostly, if not entirely, incomprehensible to the Plaintiff, fails to state any cogent, logical, or persuasive arguments that mandate the invocation of the Court's revisory power and must be denied. In this section, Mr. Holder appears to try to confuse the Court with a "kitchen sink" type argument; that is, he throws everything in his "Motion" but the kitchen sink. In this section, Mr. Holder appears to have cut and paste language from several different cases and the Maryland Rules, which range in subject matter from ejectment, to trespass, to the right to a jury trial, to equity vs. law jurisdiction, to the Court's ability to enter the finality of Judgment, to defense of a trespass claim to challenge title. The one thing, however, that the Defendant fails to throw into his Motion is any persuasive legal argument suggesting that the Judgments and Opinions of the Court in the above-captioned matter must be revised. There is nothing presented in the Defendant's Motion that suggests that the Court must open the judgment to receive additional evidence, amend its findings or its statement of reasons for the decision, set forth additional findings or reasons, enter new findings or new reasons, amend the judgment, or enter a new judgment. Moreover, there is nothing in the Motion that suggests that it is proper for the Court to exercise its revisory power and control over the judgment because of fraud, mistake, or irregularity or for newly-discovered evidence. For these reasons the Court must deny the Defendant's Motion.

Section I Paragraph B of the Motion which is mostly, if not entirely, incomprehensible to the Plaintiff fails to state any cogent, logical, or persuasive arguments that mandate the invocation of the Court's revisory power and must be denied. It appears that Mr. Holder attempts to raise arguments regarding judicial estoppel and laches. Mr. Holder's arguments are entirely without merit and his motion must be denied. There is nothing presented in the Defendant's Motion that suggests that the Court must open the judgment to receive additional

evidence, amend its findings or its statement of reasons for the decision, set forth additional findings or reasons, enter new findings or new reasons, amend the judgment, or enter a new judgment. Moreover, there is nothing in the Motion that suggests that it is proper for the Court to exercise its revisory power and control over the judgment because of fraud, mistake, or irregularity or for newly-discovered evidence. For these reasons the Court must deny the Defendant's Motion.

Section I Paragraph C of the Motion which is mostly, if not entirely, incomprehensible to the Plaintiff fails to state any cogent, logical or persuasive arguments that mandate the invocation of the Court's revisory power and must be denied. In this section of the Motion it seems, perhaps, that Mr. Holder tries to invoke the issue of collateral estoppel, res judicata, and intrinsic fraud as reasons for the Court to invoke its revisory power. Certainly these arguments are vacuous and need not be addressed herein as they are wholly unpersuasive and without merit and the Defendant's Motion must be denied.

It appears, perhaps better characterized as a guess, that Mr. Holder is asking the Court to dismiss Count V of the Complaint, Quiet Title. The exact reason for this request are unclear from the Defendant's Motion and, as such, the Plaintiff responds that he relies upon the sound judgment of the Court to deny this request. Over the past three-plus years of litigation, lengthy briefs on Motions to Dismiss, Motion(s) for Summary Judgment, a full two day trial, Washington County court dockets filled with filings and responses and responses to responses—many frivolously filed by the Defendant—only serve to underscore the appropriateness of the legal and factual findings of the Court. The Court has entertained *all* the arguments of the Defendants, has weighed the evidence and the veracity of the Plaintiff and the Defendants'

arguments and testimony, and properly held and reasoned that title belongs, as it should, with the Plaintiff alone and that the Defendants be properly enjoined.

Conclusion

For all of the foregoing reasons, the Court should deny the Defendant's Motion to Revise/Dismiss. The Judgment and Opinion must stand.

Respectfully submitted,

By: */s/*_____
Timothy F. Maloney, CPF #86060102045
Alyse L. Prawde, CPF #1412180033
Joseph Greenwald & Laake, PA
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770
(301) 220-2200 (phone)
(301) 220-1214 (fax
tmaloney@jgllaw.com
aprawde@jgllaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 21, 2023, a copy of the foregoing was served on all counsel of record and parties via MDEC.

/s/_____
Alyse L. Prawde

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. C-21-cv-20-000430
	:	
JUSTIN HOLDER, *et al.*	:	
	:	
Defendants.	:	

PLAINTIFF'S OPPOSITION TO DEFENDANT JUSTIN HOLDER'S REQUEST FOR A NEW TRIAL

COMES NOW the Plaintiff, Benjamin Estes, and hereby opposes Defendant Justin Holder's request for a new trial and in support thereof states as follows:

Introduction

Mr. Holder has filed a motion devoid of anything close to resembling any logical arguments that would necessitate a new trial in the above captioned matter. Mr. Holder is continuing to litigate through obfuscation, providing groundless legal arguments and exhausting the Court with frivolous findings. Perhaps, alternatively, Mr. Holder is simply hoping his continued baseless and frivolous attempts at litigation can somehow impose such mounting legal costs to the Plaintiff that the Plaintiff simply gives up the land to which he clearly owns. Regardless of the reasons behind Mr. Holder's filings, the following simple arguments make it clear that whatever Mr. Holder's intent, the result will continue to be the same. There is no basis for the Court to set asides its well-reasoned and wholly correct findings that it has made thus far in the above captioned case. The Court, by its own admission, has hitherto provided Mr. Holder with great latitude and assistance and the end result is the same: that the Plaintiff clearly and wholly owns the land in question. The Court's previous judgments regarding the property lines

in question and the injunction issued must stand as they are wholly correct and justice has been done.

Defendant's Arguments

From what little can be understood from the Defendant's Motion for a New Trial, it seems as though Mr. Holder is attempting to argue that he has miraculously discovered new evidence that is of such sufficient significance to make it probable that a different result regarding summary judgment as to title to the Plaintiff's land vis a vis the Defendants and the trial regarding injunctive relief against the Defendants would probably result in a different outcome. To support this argument, the Defendant incorrectly argues that a document dated 1-1-2018, some five years ago, written by the Plaintiff and his wife, inquiring about potential changes to the Keedysville Spring outflow, perhaps due to recent development or recent impoundment work at the Spring, itself, is dispositive. The rest of Mr. Holder's arguments are thoroughly incomprehensible and cannot, therefore, be addressed herein.

Legal Standard

Determination of whether to grant a motion for a new trial is made on the Judge's consideration of "the core question of whether justice has been done." *Butkiewicz v. State*, 127 Md. App. 412, 421-22, *cert denied*, 356 Md. 595 (1999). "Trial courts in Maryland are empowered with a discretion to grant a new trial as a safety valve to prevent a miscarriage of justice due to an improper verdict." *Buck v. Cam's Broadloom Rugs*, 328 Md. 51, 61 (1992).

Moreover, "[i]t is well settled that a new trial will not be granted upon a ground of newly discovered evidence 'where it appears that such evidence can have no effect other than to discredit the testimony of a witness at the original trial, contradict the witness's statements, or impeach a witness, *unless the testimony of the witness who was sought to be impeached was so*

important to the issue and the evidence impeaching the witness so strong and convincing that a different result would necessarily follow were a new trial granted.'" *Angell v. Just*, 22 Md. App. 43, 49-50 (1974). "[N]ewly discovered evidence which alleges a conflict of interest on the part of a witness testifying at the original trial, does not constitute a proper basis upon which to grant a new trial." *Id.* at 50 (citing *Gott v. Carr*, 6 G&J 309 (1834)). "Such evidence, while it casts doubt upon the credibility of the witness, does not show either a state of facts different from that to which the witness testified, or that the state of facts to which the witness testified did not in fact exist. It is not, therefore, so strong and convincing as to necessitate a different result. Similarly, newly discovered evidence which contradicts allegedly perjured testimony given by a witness at the original trial does not constitute a proper basis upon which to grant a new trial where the allegedly perjured testimony was not relied upon by the court in reaching its determination." *Angell*, 22 Md. App. at 50 (citing *Wilmer v. Placide*, 127 Md. 339, 343 (1916)). "Such evidence does not compel the grant of a new trial even though it might have established facts different from those to which the witness testified, or negated the existence of facts described by the witness, because the testimony of the witness sought to be impeached was not so important to the issues as to necessitate a different result in the event that the testimony was disbelieved." *Angell*, 22 Md. App. at 50.

Argument

1. The "Newly Discovered" evidence is not newly discovered.

The evidence which Mr. Holder contends is "newly discovered" is not newly discovered. In fact, Mr. Holder asked Mr. Estes regarding the "newly discovered" statements at trial. As Mr. Holder was able to examine Mr. Estes on the statements Mr. Holder now claims are "newly discovered," there is clearly no need to burden the trier of fact with more litigation and a new

trial to discuss what has already been discussed at trial before the trier of fact. Certainly no different result will be arrived at by the trier of fact, as justice has been done.

2. **The "Newly Discovered" evidence is not relevant to the issues of navigability of the Little Antietam Creek or the "Spring Creek" where these bodies of water flow over the Plaintiff's land.**

The "newly discovered" evidence—from a *January 2018* letter sent to the state of Maryland inquiring about potential changes in the outflow of water from the Keedysville Spring— has nothing to do with the ebb and flow of the tides and whether the waters on the Estes property are affected by the ebb and flow of the tides. Even if the "newly discovered" evidence is discussed, again, at a new trial, the "newly discovered" evidence has absolutely no relevance to whether the creeks on the Estes property are affected by the ebb and the flow of the tides, and the verdict/judgment/and opinions remain the same.

The "newly discovered" evidence has no material impact on the determination made by the Court that the creeks on the Estes property are navigable in fact, a separate test applied by the Court to test the navigability of these waters. As the Court's Opinion clearly states, the Court accepted and entertained a large amount of information regarding the creeks themselves, including photographs, testimony, and videos of the water bodies themselves. Based upon the totality of the evidence presented to it, the Court determined that the creeks on the Estes property are not navigable waters. It is hard to understand how information/evidence that Mr. Holder cross-examined Mr. Estes on *at* trial, regarding a letter from January 2018 regarding water levels/outflow from the Keedysville Spring in 2018, have any material impact to the overwhelming evidence introduced at trial that the creeks are not navigable in fact.

3. **The "Newly Discovered" evidence, even if it is considered truly newly discovered, which it should not, does not constitute a proper basis upon which to grant a new trial.**

Even if the Court were to hold that the "newly discovered" evidence is truly newly discovered, which it should not, and even if the Court were to hold that the "newly discovered" evidence casts doubt upon the credibility of the witness(es), which it should not, —still the Defendant fails to show that either a state of facts different from that to which the witness(es) testified, or that the state of facts to which the witness(es) testified did not in fact exist. Mr. Holder's "newly discovered" evidence, therefore, is clearly not so strong and convincing as to necessitate a different result. The overwhelming evidence introduced at trial clearly shows that under any test of legal navigability in the State of Maryland that the creeks that exist on the Plaintiff's property are not navigable.

Even if the Court holds that the "newly discovered" evidence is truly "newly discovered" the material discussed by Mr. Holder fails to impeach any of the testimony of the Plaintiff's witnesses. The information presented by Mr. Holder only serves to underscore the testimony of Plaintiff's witnesses. This is to say that even if the outflow of the Keedysville Spring had been reduced in January of 2018, during a period of non-drought conditions, this only serves to reinforce the testimony by the Plaintiff and the Plaintiff's wife that the creeks on the Estes property are not navigable.

4. Justice has been done.

Determination of whether to grant a motion for a new trial is made on the Judge's consideration of "the core question of whether justice has been done." The Court, by its own admission, has been very accommodating to Mr. Holder. The Court has painstakingly weighed Mr. Holder's arguments, entertained his factual improprieties, including attacks on the Court's own actions and ability to be unbiased, listened to two days of evidence and argument regarding the navigability of the water levels and the propriety of injunctive relief, read countless pages of

arguments, and hours of oral arguments regarding summary judgment. Nothing in the Defendant's Motion provides any cogent, comprehensible, or persuasive reason why a new trial is needed. The Motion is clearly an attempt at obfuscating the issues and the validity of the trial court's findings. Clearly, justice has been done.

Conclusion

For all of the foregoing reasons, the Defendant's Motion for a New Trial must be denied.

Respectfully submitted,

By: /s/_____
Timothy F. Maloney, CPF #86060102045
Alyse L. Prawde, CPF #1412180033
Joseph Greenwald & Laake, PA
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Greenbelt, MD 20770
(301) 220-2200 (phone)
(301) 220-1214 (fax
tmaloney@jgllaw.com
aprawde@jgllaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 21, 2023, a copy of the foregoing was served on all counsel of record and parties via MDEC.

/s/_____
Alyse L. Prawde

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES	*	
Plaintiff	*	
v.	*	
	*	CASE NO.: C-21-CV-20-000430
JUSTIN HOLDER, *et al.,*	*	
Defendant(s)	*	

* *

DEFENDANT JUSTIN HOLDER'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT JUSTIN HOLDER'S MOTION TO ALTER OR AMEND INJUNCTION

COMES NOW Defendant, Justin Kyle Holder, in proper person and files this Defendant Justin Holder's Reply to Plaintiff's Opposition to Defendant Justin Holder's Motion to Alter or Amend Injunction, in accordance with Md. Rule 2-311, 2-534, 2-535 and 2-324(b), and for reasons states:

REPLY

Plaintiff agrees that "Under Maryland law, an enrolled judgment can be set aside for mistake or irregularity. Mistake is limited, however, to jurisdictional error, such as where the Court lacks the power to enter judgment." *Green v. Ford Motor Credit Co*., 152 Md. App. 32, 51 (2003); *Pelletier*, 213 Md. App. at 291. The Court lacks "subject matter jurisdiction" under RP § 14-108 as established in ***Defendant's Reply to Plaintiff's Opposition to Defendant Justin Holder's Motion to Revise/Dismiss in Accordance with Real Property Code Ann. § 14-108(a)***. There has been a "mistake" within the Rule necessitating the invocation of the revisory power of the Court. Moreover there has not been a final enrolled judgement under clear Md. law and this court maintains revisory power over all matters until 30 days after final judgement. "Abuse of Discretion" is defined in *North v. North*, 102 Md. App. 1, 13-14 (1994):

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> "'Abuse of discretion' has been said to occur where no reasonable person would take the view adopted by the trial court, when the court acts without reference to any guiding rules or principles, appears to have been made on untenable grounds clearly against the logic and effect of facts and inferences before the court, *when the ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result,* and *when the ruling is violative of fact and logic it constitutes an untenable judicial act that defies reason and works an injustice."* (cleaned up and emphasis added).

Plaintiff does not deny he obtained the Sept. 19th 2022 order by fraud and deceit, because he did. Plaintiff just argues this court should finalize the fraud and deny the Defendant(s) justice, which is has no discretion to do. This court must correct the intrinsic fraud before final judgement. Any other decree is prejudicial, bias and lacks integrity; thus this court has no discretion to allow the fraud and deceit to stand. Any decision to do so is untenable and works injustice against the Defendant(s). Any reasonable person would be outraged.

THE COUT MUST AMEND THE MISREPRESENTATIONS IN ITS ORDER

1. The Court materially misrepresented Defendant Justin Holder's position in its Jan. 30th 2023 Opinion in that "Defendants Deena Holder and Justin Holder argue that no injunction should be issued in relation to the use of the Creek because the waters of the Creek at this location are *navigable."* The trial transcript attached as ***Exhibit 1 - Estes.Holder.12.15.22 - Holder's Position*** is unambiguous: "THE COURT: Okay, okay. So, you are going to try to show me that the law is that this whole issue of navigability really doesn't matter. MR. HOLDER: Doesn't even matter. THE COURT: Because you're allowed to walk anyways. MR. HOLDER: You're allowed to walk anyways. THE COURT: Okay." Defendant relies on the 1632 King's charter reserving rights to "fish" and "priveledge of salting and drying fish on the shores." Plaintiff offered no evidence at trial or argument in law the rights have been lost or otherwise extinguished. The trial court's opinion misrepresents the facts and position of Defendant unfairly and unjustly.

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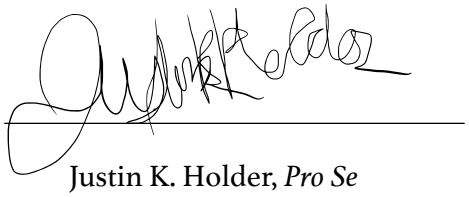
2. The courts Jan 30th 2023 Opinion at p. 12 footnote finds “From information received in a previous proceeding, it is clear that Justin Holder and Deena Holder use Uncle Eddie's as an alter-ego to hold the land neighboring Plaintiff's property.” Defendant Justin Holder requested judge Andrew Wilkinson recuse himself because *inter alia* he was biased due to other proceeding(s) and this finding tends to prove same. The record in the instant case contains no evidence to substantiate a finding of fact the Plaintiff has been forwarding without any evidence throughout this litigation. This ruling does in fact demonstrate without any reasonable doubt from a reasonable person judge Andrew Wilkinson is bias to assist Plaintiff forward his allegations when the court knows through correspondence with Ms. Peeples as counsel for Deena Holder, Plaintiff has no evidence of same. Any reasonable person would say this is unfair and bias.

CONCLUSION

The court has the authority to Amend the clear misrepresentations mistakes and irregularities in its Jan. 30th 2023 orders. The court has no discretion to allow a fraud to stand when it denies the parties justice and a fair trial. The integrity of this court is at stake because Plaintiff chose to lie and this court believed him as an officer thereof. The court lacks "subject mater jurisdiction” to issue the decree and can correct the mistake.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of February 2023, a copy of the foregoing Defendant Justin Holder's Reply to Plaintiff's Opposition to Defendant Justin Holder's Motion to Alter or Amend Injunction was served via the MDEC system to :

Timothy Maloney, Esq.,
Brandy Peeples, Esq.,
Robert Kline, Esq.,
Justin Holder, *Pro Se;*

Justin K. Holder, *Pro Se*

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IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES	*	
Plaintiff	*	
v.	*	**CASE NO. C-21-CV-20-430**
JUSTIN HOLDER, et al.	*	
Defendants	*	

TRANSCRIPT OF PROCEEDINGS

(PRELIMINARY INJUCTION HEARING)

(VOLUME 1 – DAY 1)

Circuit Court

Hagerstown, MD

December 15, 2022 at 10:02 a.m.

Before:

The Honorable Andrew F. Wilkinson

Appearances:

Alyse Prawde, Esquire, attorney for Plaintiff, Benjamin Estes; and

Justin Holder, Defendant, pro se; and

Brandy Peeples, Esquire, attorney for Defendant, Deena Holder.

Transcribed from electronic recording by:

Linde M. Cessna, Court Reporter

Circuit Court for Washington County, Maryland

The Court House

Hagerstown, Maryland 21740

240-313-2564

MR. HOLDER: Okay.

THE COURT: Okay, okay. So, you are going to try to show me that the law is that this whole issue of navigability really doesn't matter.

MR. HOLDER: Doesn't even matter.

THE COURT: Because you're allowed to walk anyways.

MR. HOLDER: You're allowed to walk anyways.

THE COURT: Okay.

MR. HOLDER: That's what I intend to show you on that.

THE COURT: Okay.

MR. HOLDER: The third thing I'm going to show you is the prescriptive use of the public that has been hostile, open, notorious and continuous for so long that perfect title to easement and grace has been vested in the public.

THE COURT: Okay. Okay.

MR. HOLDER: Okay.

THE COURT: Okay, good. Alright. Let's see here. Can we take a five minute break?

(Whereupon at 11:25 a.m., court was in recess and resumed at 11:31 a.m., and the following occurred in open court:)

THE COURT: Okay, back on the record. Estes versus Holder, C-21-CV-20-430. Okay. I know I've heard a

that's a completely different situation than we have here. And I, you know, I'm not trying to be remiss or cagey, I'm just pointing out that the Public Trust Doctrine as of 2015 is alive and well and if in fact the Natural Resources Article and I can pull up the Natural Resources Article that cited which is inapplicable to this case there are no land leases applicable to the Little Antietam Creek.

THE COURT: No.

MS. PEEPLES: So, I mean, I just cite this for the proposition that as recently as 2015 the Court acknowledged existence of the Public Trust Doctrine.

THE COURT: Right, that there's an issue of Public Trust Doctrine that needs to be considered.

MS. PEEPLES: Correct.

THE COURT: I hear you. Okay.

MS. PEEPLES: Thank you, Your Honor. Mr. Holder.

MR. HOLDER: Your Honor, I just disagree with both of the relevance of navigability to any of this because the King's Charter in the Public Trust Doctrine applied to the creeks and rivers of the State. If you just read the plain language in the 1632 Charter that cited in *DNR vs. Ocean City,* 322 A.2d 630 - -

THE COURT: Slow down. 320 - -

MR. HOLDER: 322 A.2d 630 Md. (1975). It relates to

Kings Charter back to Justinians of the Roman. And the seashores as far the greatest winters flood extents the things common to man are the water and the air. This is the *magna carta*. And I know that Mr. Estes feels that he has a bundle of sticks and he owns this land. But if you listen to Ms. Prawde she made a really good argument, *ad filum medium sub publicum*. We walk out there on Washington Street somebody owns that land underneath there. It might not be - - Maybe the State bought it in (unintelligible) maybe they didn't. But it's probably a state highway right of way. You get a pothole you're not trespassing. These are public rights of passage and before we had roads we had the creeks. Now, there's cases out there where people have gotten people kicked out for trespassing on the bottom. They're Indian deeds. Because the Indians gave the land patents different than the King did. The King in the colonial states is pretty much the rights of fishing and navigation which is to fish the waters and drive them upon the shores. That's the language I'm relying on. You can fish the waters you can drive upon the shores. She said that the riparian owners have the rights to the property and to the water. Even the fast lands and the relictions. You know, this little chunk up here that's under water sometimes during the year. So, you get the water when it gets high and it

runs through there that's the high water mark. I mean, this, this stream varies five and six feet. I've got - - You got at like Big Pipe Creek they have, they have a water trial in there. It's listed on the DNR's website. They said, hey sometimes - -

THE COURT: Okay, you're going to be able to show me that in the testimony.

MR. HOLDER: Yeah, I'll be able to show you that, yeah.

THE COURT: Okay.

MR. HOLDER: I can show you that.

THE COURT: How though? You're asking me to look back to the 322 A.2nd case that talks about the 1632 Kings Charter what that charter originally said, okay. How do you want me to deal with though the case law in State of Maryland that has occurred after that, that talks to, there's some case law that talks about the Kings Charter. It talks about Lord Baltimore. What Lord Baltimore's rights of grant of land and patents of land were, etc., etc., etc. But the case law seems to have evolved over time to more of what Ms. Prawde and Ms. Peeples are saying, which is the courts have landed on this idea of navigability being the central issue. So, I guess what I'm asking is, I just want to be sure I understand before we get going with testimony, are you asking me to ignore

the body of law that suggests navigability is the issue that I need to key in on and I need - -

MR. HOLDER: No, I just - -

THE COURT: - - to go back to this 1632 Kings Charter or do I not ignore navigability?

MR. HOLDER: No, I just don't think, I think you'll find that those cases are based on the 1862 statute where the State came in and said, hey, we want to control development. Anything under the ebb and flow of the tide is navigable waters of the State by law, by law they declared it. And the State owns everything. I mean the *Bowie* Court and the *Kennedy vs. Browne*, those cases that I cited in my Motion to Alter or Amend, those are really good cases and it says, like Ben, you know, like Mr. Estes is right. If you own to the edge of the creek you own to the center of the creek, *ad filum medium*. That's why you have this because you both have access. You both get in there; you both use the water for whatever. I mean, what, what if you don't have water in town, you want to go to the spring and get a drink, you know. I mean, some people in town don't have water. And you want to drink the water, you want to play in it. I mean when we were kids we used to lay in the spring and then jump out of the spring and jump in the warm water in the creek. It was probably warm because the (unintelligible)

Digitally signed by Linde M. Cessna

DIGITALLY SIGNED CERTIFICATE

I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of, *Benjamin Estes v. Justin Holder, et al.*, Case No. C-21-CV-20-430, Volume I – Day 1, in the Circuit Court for Washington County, on December 15, 2022, before the Honorable Andrew F. Wilkinson, Judge.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 257 constitute the official transcript of the proceedings.

In witness whereof, I have affixed my signature this 3rd day of February, 2023.

Linde M. Cessna

Linde M. Cessna

Court Reporter

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES	*	
Plaintiff	*	
v.	*	
	*	CASE NO.: C-21-CV-20-000430
JUSTIN HOLDER, *et al.,*	*	
Defendant(s)	*	

* *

DEFENDANT JUSTIN HOLDER'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT JUSTIN HOLDER'S MOTION TO REVISE/DISMISS IN ACCORDANCE WITH REAL PROPERTY CODE ANN. § 14-108(a)

COMES NOW Defendant, Justin Kyle Holder, in proper person and files this Defendant Justin Holder's Reply to Plaintiff's Opposition to Defendant Justin Holder's Motion to Revise/Dismiss in Accordance with Real Property Code Ann. § 14-108(a), in accordance with Md. Rule 2-535 and 2-324, and for reasons states:

REPLY

"Plaintiff is unable to discern exactly what Mr. Holder is arguing in his rambling and incomprehensible motion." ***Plaintiff's Opposition to Defendant Justin Holder's Motion to Revise/Dismiss in Accordance with Real Property Code Ann. § 14-108(a)*** at p. 1. Plaintiff then spends 2 pages rambling about how incomprehensible the Motion is without citing to any legal grounds or authority. Plaintiff has none because the law is crystal clear, the court lacks "subject matter jurisdiction." "It appears, perhaps better characterized as a guess, that Mr. Holder is asking the Court to dismiss Count V of the Complaint, Quiet Title." *Id* at p. 3. Not quite, Defendant has moved this court and this court shall dismiss the Quiet Title

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immediately because it lacks "subject matter jurisdiction" to render any further orders, opinion or decree. This court has no discretion as is demonstrated with crystal clear Maryland law in the grounds and authorities section *infra.* The Plaintiff has simply failed in his pleading's or strategy and this court shall dismiss an action when it lacks jurisdiction.

GROUNDS AND AUTHORITIES - THE COURT LACKS SUBJECT MATTER JURISDICTION AND SHALL DISMISS - THE COURT HAS NO DISCRETION

In accordance with MD. Real Property Code Ann. § 14-108(a) Plaintiff can not maintain suit to Quiet Title with "an action at law [] pending to enforce or test the validity of the title." Additionally Plaintiff is not in possession and has adequate remedy at law. The court's Sept 19th 2022 order has not been certified under Md. rule 2-602(b) and is therefore not a final judgement. The court maintains revisory power over the case until 30 days after final judgement. Plaintiff failed to make a showing of final judgement or equity jurisdiction.

As a matter of Md. law this court lacks "subject matter jurisdiction" to Quiet Title. "**(b) Subject Matter Jurisdiction.** Whenever it appears that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." *Rule 2-324 - Preservation of Certain Defenses, Md. R. Civ. P. Cir. Ct. 2-324.* The term "shall" connotes that an action is mandatory (not directive), and the court has no discretion, *see Uthus v. VALLEY MILL CAMP*, 472 Md. 378, 246 A.3d 1225, 1235 (2021). "If jurisdiction is lacking in this sense, a decree rendered by the court would be void." *Moore v. McAllister*, 216 Md. 497, 508 , 141 A.2d 176 (1958). "Lack of subject matter jurisdiction may be raised at any time, including initially on appeal. Additionally, the issue of subject matter jurisdiction need not be raised by a party, but may be raised by a court *sua sponte." Derry v. State,* 358 Md. 325, 334, 748 A.2d 478, 482 (2000) (citation omitted); *See also Duffy v. Conaway,* 295 Md. 242, 254 n. 8, 455 A.2d 955, 961 n. 8 (1983)

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(reiterating that subject matter "[j]urisdiction is a matter which, if noticed, will be addressed by a court even though it was not raised by any of the parties." (citations omitted)).

CONCLUSION

Thus Plaintiff has failed to make any good faith showing or provide legal grounds and authority[1] to maintain suit in accordance with RP § 14-108(a) or jurisdiction in equity. The court's order(s) were void *ab initio.* The court has no discretion in accordance with Md. Rule 2-324(b) and this court shall dismiss Count V Quiet Title immediately because it lacks "subject matter jurisdiction" to render any further orders, opinions or decree.

Respectfully submitted,

Justin K. Holder, *Pro Se*
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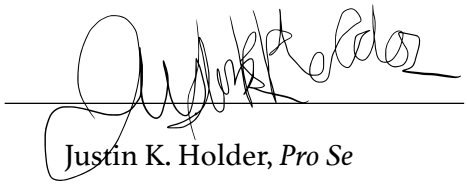
(240) 356-2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of February 2023, a copy of the foregoing Defendant Justin Holder's Reply to Plaintiff's Opposition to Defendant Justin Holder's Motion to Revise/Dismiss in Accordance with Real Property Code Ann. § 14-108(a) was served via the MDEC system to :

Timothy Maloney, Esq.,
Brandy Peeples, Esq.,
Robert Kline, Esq.,
Justin Holder, *Pro Se;*



Justin K. Holder, *Pro Se*

Justin K. Holder

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[1] "a response to a motion shall state with particularity the grounds and the authorities in support of each ground." *Rule 2-311 - Motions, Md. R. Civ. P. Cir. Ct. 2-311*

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES	*	
Plaintiff	*	
v.	*	
	*	CASE NO.: C-21-CV-20-000430
JUSTIN HOLDER, *et al.,*	*	
Defendant(s)	*	

* *

DEFENDANT JUSTIN HOLDER'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT JUSTIN HOLDER'S MOTION FOR NEW TRIAL

COMES NOW Defendant, Justin Kyle Holder, in proper person and files this Defendant Justin Holder's Reply to Plaintiff's Opposition to Defendant Justin Holder's Motion for New Trial, in accordance with Md. Rule 2-311, 2-533, 2-535 and 2-324(b), and for reasons states:

REPLY - PLAINTIFF CONCEDES HIS PERJURY, DECIET AND FRAUD

In the Defendant's Motion for New Trial he identifies 3 clear and convincing frauds, lies and deceit the Plaintiff has thrust upon this court in order to achieve his success:

A. The Plaintiff lied and perjured himself in his May 12th 2021 and June 21st 2022 affidavits claiming personal knowledge of predecessor adverse passion he testified he did not have. This affidavit defeated summary judgement on title because the court believed the words of a licensed attorney. This lie may have been believed by the surveyors *infra;*
B. The testimony of Frederic Frederick states he believes with a "reasonable degree" of certainty the boundary follows the "possession fence" on Plat 10955; and
C. The testimony of John Dowling (contradicting deposition) stating with a "reasonable degree" of certainty the boundary follows the "possession fence" on Plat 9186.

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Giving Frederic Frederick and John Dowling, Esq. the benefit that their "reasonable degree" of certainty the boundary[1] followed the "possession fence" was made because they too believed the lies Estes told in his May 12th 2021 and June 21st 2022 affidavits; that "reasonable degree" was based on fraud, lies and deceit. Thus Plaintiff's lies, fraud and deceit are what the decision, opinion, orders and decree of this court have turned upon. What Plaintiff Estes has not done in his opposition is demonstrate his affidavit was at all truthful, it was not. Moreover and more maliciously Plaintiff admitted in December 15th 2022 trial he lied because he knew he had to in order to survive summary judgement. This court will not stand for such unscrupulous behavior from its own officer especially.

Plaintiff agrees that his lies, deceit and fraud are at the forefront of "the core question of whether justice has been done." *Butkiewicz v. State*, 127 Md. App. 412, 421-22, *cert denied*, 356 Md. 595 (1999). "Trial courts in Maryland are empowered with a discretion to grant a new trial as a safety valve to prevent a miscarriage of justice due to an improper verdict." *Buck v. Cam's Broadloom Rugs*, 328 Md. 51, 61 (1992). "...the testimony of the witness who was sought to be impeached was so important to the issue and the evidence impeaching the witness so strong and convincing that a different result would necessarily follow were a new trial granted.'" *Angell v. Just*, 22 Md. App. 43, 49-50 (1974). In this case the affidavit of Plaintiff Estes is the only evidence relied on. The surveyors both clearly and unambiguously testify that the Hutzell deed recorded at Liber 402 folio 137 title lines follow the creek bank and the new Frederic Frederick description follows a "possession fence." Plaintiff Estes' perjured affidavit is the only evidence in the record of adverse possession and it's a lie, with the evil intent of lying to defeat summary judgement. It is unequivocal the

[1] Notwithstanding the clear dispute of material fact that Frederick said Plat 10955 and Dowling said Plat 9186, what have been determined to be 2 completely different lines on the south end.

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Defendant(s) were denied justice by the fraudulent act and once the intrinsic fraud is signed and sealed as a final judgment the Defendant(s) have no further ability to request redress. For this reason alone a new trial must be granted to correct the injustice done.

REPLY - THE PLAINTIFF WILLFULLY HID THE JAN. 1ST 2018 LETTER

Plaintiff argues "This is to say that even if the outflow of the Keedysville Spring had been reduced in January of 2018, during a period of non-drought conditions, this only serves to reinforce the testimony by the Plaintiff and the Plaintiff's wife that the creeks on the Estes property are not navigable." OPP. P. 5. This statement contradicts the Plaintiff and wife's testimony, but more importantly it tends to prove Plaintiff has evidence of why the water levels have been lowered. Thus that evidence will in fact allow the court to rule the creek could be navigable at some future date when the normal water levels return. All the Plaintiff's pictures were most likely from after 2018 and reflect the lower water levels. While Plaintiff alleges the evidence was not newly discovered, it should have been provided to the Defendant in discovery and was improperly withheld. There is a substantial difference in advantage to questioning a witness on a hunch he wrote a letter because of a hint in the town minutes, versus having the document in hand during discovery to pursue the evidence to its fullest and properly cross examine the witnesses with same. The January 2018 letter had a high probability of a different result because not only does it impeach the only 2 witnesses for Plaintiff, it opens the door to high water levels in the future. Kayaks draft but 5" of water, it would not take much to float free and clear of any obstacles in the Little Antietam Creek. Plaintiff failed to offer any explanation of why he improperly withheld the evidence from the Defendants, and thus this court should presume it was in bad faith.

Justin K. Holder

Pro se Litigator

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CONCLUSION

Plaintiff lied to this court in affidavit with the intention to do so in order to survive summary judgement. Plaintiff as officer of this court has made a mockery of the proceeding and justice can not be done because there is no dispute a different result would be reached without the fraudulent, perjured affidavit. Estes further withheld material evidence from this Defendant which was directly against his interest, signed and sealed by Estes and wife to out state government. Estes withheld the evidence in bad faith with no justification. Estes is the epitome of new trial and the court has no discretion to allow intrinsic fraud to prevail, when it can be corrected. Justice has unequivocally been miscarried and this court must right the wrong; rather than allow Estes to gain advantage in the future from his lies.

Respectfully submitted,

Justin K. Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, Maryland 21782
(240) 356-2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of February 2023, a copy of the foregoing Defendant Justin Holder's Reply to Plaintiff's Opposition to Defendant Justin Holder's Motion for New Trial was served via the MDEC system to :

Timothy Maloney, Esq.,
Brandy Peeples, Esq.,
Robert Kline, Esq.,
Justin Holder, *Pro Se;*

Justin K. Holder, *Pro Se*

Justin K. Holder

Pro se Litigator

308 W. Chapline St.
Sharpsburg, MD 21782
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IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES,	*	
Plaintiff	*	CASE NO.: C-21-CV-20-000430
v.	*	
	*	Consolidated by August 20th, 2021 Order
JUSTIN HOLDER, *et al.*,	*	
	*	CASE NO.: C-21-CV-21-000130
Defendant(s)	*	

* *

LINE - Regarding Md. Rule 2-132

COMES NOW Defendant, Justin Holder, in Proper Person, and files this Line Regarding Md. Rule 2-132.

1. On February 18th 2023 Plaintiff Estes filed a line in proper person stating "Please enter the appearance of Benjamin Estes as counsel for Benjamin Estes."
2. "**(1)** an individual may enter an appearance by an attorney or in proper person" *Rule 2-131 - Appearance*. Plaintiff is appearing in proper person[1] and/or barred by the rules.[2]
3. On February 21st 2023 Timothy Maloney filed a line stating "Pursuant to Maryland Rule 2-132(a),[3] Timothy F. Maloney, Alyse L. Prawde, and the law firm of Joseph, Greenwald & Laake, P.A. file this Notice of Withdrawal of Counsel. Plaintiff Benjamin Estes filed a Notice of Appearance on February 18, 2023."
4. Thus Plaintiff's current counsel must file a Motion in accordance of Md. Rule 2-132(b) because their appearance was not "limited" nor does Plaintiff have another "attorney."

Justin K. Holder

Pro se Litigator

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[1] The word attorney comes from French, meaning "one appointed or constituted," and the word's original meaning is of a person acting for another as an agent or deputy. Thus Estes can not be his own agent, he is simply appearing *pro se.*

[2] "**(a)** An attorney shall not act as advocate at a trial in which the attorney is likely to be a necessary witness unless:" *Rule 19-303.7 - Attorney as Witness (3.7), Md. R. Att'y 19-303.7*

[3] "(1) the client has another attorney of record" *Rule 2-132(a) - Striking of Attorneys Appearance*

WHEREFORE, Defendant Justin Holder objects to the line striking the appearance of Timothy F. Maloney, Alyse L. Prawde, and the law firm of Joseph, Greenwald & Laake, P.A.; and the line entering appearance of Benjamin Estes as counsel.

Respectfully submitted,

Justin K. Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, Maryland 21782
(240) 356-2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of February, 2023, a copy of the foregoing Line was served via the MDEC system to :

Timothy Maloney, Esq.,
Brandy Peeples, Esq.,
Robert Kline, Esq.,
Justin Holder, *Pro Se*

Justin K. Holder, *Pro Se*

Justin K. Holder

Pro se Litigator

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March 5th 2023

Justin K. Holder
308 West Chapline Street
Sharpsburg, MD 21782
(240) 356 - 2008

Honorable Andrew F. Wilkinson
Judge - Washington County Circuit Court
24 Summit Ave, Hagerstown, MD 21740

Re: "and you will know the truth, and the truth will set you free." *(English Standard Version, 2020, John 8:32)*

Benjamin Estes v. Justin Holder, et al., Case No. c-21-cv-20-000430; Request to file Motion

Dear Honorable Andrew Wilkinson,

Pursuant to the Case Management Order entered on Sept. 20, 2021, Defendant Justin Holder requests to file a Motion in accordance with rule 2-535.

THE UNDISPUTED TRUTH

At the December 15/16th 2022 trial and in his bench memo Defendant Justin Holder was requesting this Court construe the Public's rights in accordance with Article IV of the Charter of Maryland, 20 June 1632, by which Charles I granted to Caecilius Calvert, Lord of Baltimore subjecting the grant to the reservation contained in Article XVI:

> "*...**Saving always to US, our heirs and successors***, and to all the subjects of our kingdoms of England and Ireland, of US, our heirs and successors, ***the liberty of fishing*** for sea-fish, as well in the sea, bays, straits, and navigable rivers, as ***in the*** harbours, bays, and ***creeks*** of the province aforesaid, ***and the privilege of salting and drying fish on the shores of the same province;...*"** [Emphasis Added]

Thus Justin Holder relies on rights reserved to the public[1] described as: "***Saving always to US, our heirs and successors, the liberty of fishing in the creeks and the privilege of salting and drying fish on the shores of the same province.***" (*1632 Kings Charter* Article XVI Cleaned up)[2]

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[1] In accordance with Art. 6 of the Md Declaration of Rights and Public Trust Doctrine, *see Kerpelman v. Bd. of Public Works*, 261 Md. 436, 445, 276 A.2d 56, (1971) ("The lands in Maryland covered by water were granted to the Lord Proprietor by Section 4 of the Charter from King Charles I to Caecillius Calvert, Baron of Baltimore, his heirs, successors and assigns, who had the power to dispose of such lands, subject to the public rights of fishing and navigation. *Browne v. Kennedy,* 5 H & J. 195 (1821). By virtue of Art. 5 of the Declaration of Rights in the Maryland Constitution, the inhabitants of Maryland became entitled to all property derived from and under the Charter and thereafter the State of Maryland had the same title to, and rights in, such lands under water as the Lord Proprietor had previously held.") *Id*

[2] The record unequivocally proves Defendant made clear the right existed without any consideration of "navigability" but reserved the right to make Plaintiff prove his case, regardless of Plaintiff's error in law.

THE COURTS JANUARY 30th 2023 ORDER

DEFENDANTS' POSITION

Defendant Uncle Eddie's, the only property owner bordering Plaintiff's land, did not attend the trial.[2] Defendants Deena Holder and Justin Holder argue that no injunction should be issued in relation to the use of the Creek because the waters of the Creek at this location are *navigable*. As such, the public (including the Holders) are permitted to use the water, including the land underneath.

While Deena Holder's counsel erred in law as Plaintiff, Justin Holder's position was clearly stated over the coarse of trial, *see* "*THE UNDISPUTED TRUTH*" *supra.* Justin Holder unambiguously stated "navigability" was irrelevant to public rights.[3]

The "Defendant's Position" (was falsely stated by Honorable Andrew Wilkinson) and the record of the trial, pleadings, papers and evidence are incompatible and in direct contradiction of same. The Court's "imbroglio" ("That is, in non-navigable waters, the public has the right to boat, kayak, canoe, and swim, among other things that can be done on or within the water, but the public does not have the right to touch the land beneath the water.") The language in the court's order purporting to be *Stansbury v. MDR Development, LLC*, 161 Md. App. 594, 606-09 (2005) does not exist in Md. Law.

THE IMMEDIATELY APPEALABLE INJUNCTION - ISSUE OF FIRST IMPRESSION

MD. Courts and Judicial Proceedings Code Ann. § 12-303 (2021) "A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case:...(3) An order: (i) Granting or dissolving an injunction..."; and

the "reservation" ("***Saving always to US, our heirs and successors, the liberty of fishing in the creeks and the privilege of salting and drying fish on the shores of the same province.")*** has never been extinguished by any Maryland law.

If this court has construed the "reservation" differently than Justin Holder has positioned himself at trial, this court should simply speak that truth in its order. Justin Holder should not be burdened with dropping a footnote in his Appellant Brief "There was a fraud upon the court."

Thus the Defendant would like to write a 2 page Motion requesting the court restate the Defendants position according to the "reservation" he relies on; and if the court determines the "reservation" does not allow the public to wade/walk, its "imbroglio" requires no clarification.

Justin Holder, *Pro Se*

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[3] The fact of "navigability" as it related to U.S. EPA and Army Corps. Of Engineer determinations on waterways is its own hot topic with a 24 state Attorney General lawsuit currently *sub judice, see State of West Virginia et al v U.S. Enviromental Protection Agency et al,* United States District Court for the District of North Dakota, United States, (2023) (Case 3:23-cv-00032-ARS).